EUROPEAN SEMINAR ON PROBATION

LONDON
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EUROPEAN SEMINAR ON PROBATION

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FOREWORD

The Social Commission of the Economic and Social Council included in 1948 the question of probation on its work programme in the field of the prevention of crime and the treatment of offenders, as being one of the important aspects of the development of a rational and social criminal policy. A comprehensive international survey and comparative analysis of adult probation and related measures was first carried out by the Secretariat, and a report on this study was published in 1951.[1]

Upon the recommendation of the Social Commission, the Economic and Social Council adopted on 9 August 1951 a resolution[2] in which it expressed its belief that probation is an effective social method for the treatment of offenders and thus for the prevention of recidivism, as well as a method by means of which terms of imprisonment and, in particular, short-term imprisonment can be effectively avoided.

Probation has demonstrated itself as an effective device for the rehabilitation of offenders, while allowing them to remain productive members of the community and avoiding the stigmatizing and frequently deleterious effect of imprisonment. From a financial point of view, a judicious use of probation can contribute to reducing considerably the provisions for prison administration in national budgets. However, adult probation as a means for the social treatment of offenders is very little developed in most countries, in spite of a keen interest which has led in several of them to the preparation of draft legislation on the matter. The Council therefore urged all governments to give favourable consideration to the adoption and development of probation as a major instrument of policy in the field of the prevention of crime and the treatment of offenders. In addition, the Council called the attention of governments to the existing United Nations facilities for technical assistance in this respect and urged the utilization of such facilities.

The United Nations has since pursued its activity with regard to this question. On the one hand, a complementary study on the practical results and on the financial aspects of the organization of probation has been prepared for the Secretariat by a consultant and will be published in 1954. On the other hand, the Technical Assistance Administration and the Department of Social Affairs of the Secretariat organized in 1952 a European Seminar on probation.

It was felt that a Seminar could provide impetus for the creation or the development of appropriate legislation and services, by giving an opportunity for key government officials and others whose functions are related to the

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1/ Probation and Related Measures, E/CN.5/230.

2/ Resolution 390 (XIII) E.

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practice of probation to exchange information and points of view on the objectives, techniques, and legislation pertaining to probation; to assist at lectures, given by authorities in the field, on the principal aspects of probation, including criteria for eligibility, casework services, and selection and training of personnel; and to observe administrative and treatment procedures in probation, including the preparation of social histories, methods of supervision, record keeping, and the utilization of auxiliary social services.

The Seminar was held in London from 20 to 30 October 1952, at the invitation of the Government of the United Kingdom. Its preparation was entrusted to a Directorate of four eminent specialists in the field, working in close-co-operation with the Secretariat. In addition, nine special experts were asked to deliver lectures and to introduce the discussion on specific aspects of the subject. The Seminar was attended by fifty-eight delegates representing seventeen countries. The participating governments had been requested to constitute their teams in such a way that for each country the following services would be represented: viz. judiciary, correctional administration, social work training, and social welfare administration. Sir Oswald Allen and Mr. Henri Hauck, respectively British and French members of the Social Commission, who were in London at the time, were invited to participate in the work of the Seminar.

The report which follows comprises the main documents of the Seminar. These include the General Report adopted by the Seminar, the technical papers submitted by the various lecturers, presented in the order in which they have been considered at the Seminar, statements on probation and related measures in specific countries submitted by the participating delegations, and the list of participants.

GENERAL REPORT[1/]

I. Introduction

The Seminar on probation took place in London from 20 to 30 October 1952. It was attended by fifty-eight delegates representing seventeen countries. The official languages were French and English.

Twelve special experts whose papers had been printed and circulated to the participants made statements during the mornings on the different aspects of the problem, and so provided material for discussion among the participants both in the morning plenary sessions and in the four study groups which met in the afternoons. Each of these groups included delegates representing the different countries and the different fields of interest.

Most of the seventeen countries represented at the Seminar had previously furnished a report on probation or on the similar measures in operation within their territory. Copies of these reports were made available to the delegates and the special experts and observers who took part in the Seminar.

During the Seminar probation officers demonstrated by means of case-histories their case-work techniques, and gave a dramatic presentation of their work in court. A documentary film on the work of English probation officers was shown. Visits were arranged to courts and to institutions and clinics engaged in the diagnosis and treatment of delinquency. These arrangements helped to elucidate the problems studied.

II. General Position of the Problem

1. The desirability of promoting the adoption and the development of the probation system was not in question. This was accepted by all the participants and it was stressed that the most important thing was not the legal device by means of which probation might be incorporated into the legal systems of different countries, but rather the development of the method of supervision, that is, the process of helping the offender to re-establish himself in society by means of positive treatment in the open.

1/ Adopted by the Seminar at its closing session, 30 October 1952. Messrs. Jean Dupréel and Johannes B. Andenaes acted as joint Rapporteurs.

2. From the first the Seminar adopted a practical aim: how to develop the probation system in countries where it already existed and to introduce it into legal systems which did not as yet comprise it.

Questions of a purely juridical or legal nature were dealt with so far as this was necessary to secure the formulation of concrete proposals capable of being put into effect.

3. The Seminar concentrated on the study of probation as applied to adult offenders. Consequently, the problem of measures of social defence with regard to pre-delinquents was deliberately omitted and reference was made to the treatment of juveniles only in so far as this could suggest solutions bearing on the subject under examination.

4. For the purpose of defining probation, the subject under consideration, the Seminar deliberately attached greater importance to the spirit of probation than to the juridical terms employed.

The definition which appears on page four of the United Nations publication Probation and Related Measures 2/ was taken as a starting point: "... it may be said that probation is a method of dealing with specially selected offenders and that it consists of the conditional suspension of punishment while the offender is placed under personal supervision and is given individual guidance or 'treatment'".

Some study groups suggested adding to this definition the conception developed in the analysis of the definition of probation in the above-mentioned publication, that probation is essentially treatment carried out in the community, that is in freedom. It was, accordingly, considered proper to exclude from the field of probation measures which entail the enforced deprivation of liberty.

On the other hand it could be accepted that a measure which placed a person, for a limited period and with his consent, in an institution of a non-penitentiary type for the purpose of undergoing appropriate treatment of a medical or educative character remains within the framework of probation.

All members of the Seminar were agreed in emphasizing that in probation treatment surveillance as such took second place to effective help given by the probation officer to the person in his care.

III. Placing on Probation

1. The question of the stage of the proceedings at which it was appropriate to decide to place an offender on probation necessarily depended on the different legal systems. The same might be said of the different conceptions of the nature of probation, which may be considered either as an independent measure or as a measure involving supervision as an adjunct to the suspension of pronouncement of sentence or to the suspension of execution of a sentence already pronounced.

2/ Published by the United Nations, New York, 1951.

The Seminar noted the great differences which existed in this respect between the legal systems of the countries represented.

Some delegates were in favour of the placing of offenders on probation without sentencing, and drew attention in this connexion to the system laid down in the English Criminal Justice Act, 1948. Others thought that in the case of adults the threat of having to undergo a definite sentence, already pronounced and simply suspended during a trial period, had a salutory effect.

Everyone agreed, however, in emphasizing that failure to observe a requirement of a probation order should never result in the automatic cancellation of the order.

2. Some delegates belonging to countries the legal systems of which provide for the "sursis" only, where probation for adults had not yet been legally adopted, declared that at present it was reasonable and practical to introduce the probation system into the law in the form of a special type of "sursis" involving the supervision of the offender while left in freedom which is the essential feature of probation.

The solution thus proposed did not under-estimate the argument put forward by the delegates of some countries which preferred to establish probation as an autonomous measure, independent of the imposition of any other penalty or measure.

But, at the moment, and as far as a certain number of European countries were concerned, the "sursis" constituted the channel through which probation could most easily be established in the existing legal framework. If it succeeded, it could subsequently be consolidated and accorded the status of a separate penal measure.

It was to be noted that this form of the "sursis" could and must co-exist with the simple "sursis", which, for certain occasional offenders remained in the view of many, the most satisfactory measure.

It might be remarked here that when probation was regarded as a measure independent of the "sursis", it need not be the court which takes the decision: it may be the Public Ministry (Ministère Public), a solution which was at present applied by certain Scandinavian countries and by the Netherlands and which has been tried out with success in Belgium and in France. Certain delegates wished, however, to make it clear that in their opinion the responsibility for reaching a decision on probation should rest with the court in all circumstances. The court alone offered complete and absolute guarantees.

IV. Scope of Probation

1. Two observations of principle were made:

(a) It was not desirable to impose limitations of a general and mandatory nature on the scope of the application of probation. Probation was a method of social treatment, and it would be regrettable if the judicial authorities were unable to use it whenever such a course appeared appropriate to them in the interest of the individual and of society.

(b) On the other hand, in defining probation stress was laid on the necessity for using this method of treatment with discernment, by carefully selecting the persons to whom it was to be applied.

2. On the practical plane these recommendations raised many difficulties.

Some delegates considered that in the interests of the success of probation itself it was necessary to place legal limits on its application. In support of this view, reference was made to the possible reactions of public opinion. It was said that the public would not understand it if those guilty of grave crimes were given the benefit of a measure whose visible effect would be to leave them in freedom. The limitations proposed consisted in excluding from probation those who had committed certain serious crimes which would be defined by law.

Such restrictions might apply also to certain categories of offenders such as recidivists. According to the general opinion,however, as personality is not unchanging it might be useful at a given moment to place a recidivist on probation. This is done at present in the United Kingdom and also in other countries.

Another consideration on the basis of which the application of probation might be restricted, was that of obtaining the offender's consent. Should such consent be necessary before applying the measure, or was it merely desirable? The majority opinion was that the consent of the offender was certainly one of the factors making for success as it created from the beginning a favourable climate, an atmosphere of confident co-operation in the task undertaken by the probationer with the help of his probation officer. It appeared nevertheless to certain delegates that it would be going too far to make the probation order dependent, in every case, and ab initio, on the consent of the offender. The person often did not understand clearly what it was all about; but as soon as he was reassured as to the nature and spirit of the measure he co-operated actively in his own rehabilitation.

While it was agreed that there should be careful selection of the cases to be placed on probation, difficulties appeared when the question arose of specifying how this initial selection should be made. It was resolved in general terms that the authority responsible for making the probation order should have at its disposal the results of a social enquiry carried out by personnel who were trained for this purpose and were independent of the police

who collected the evidence of guilt. The service responsible for making these preliminary enquiries must carry out its work in such a way as to indicate the likelihood of success in the event of probation being used. It must also have recourse, where necessary, to the assistance of specialists, in accordance with the recommendations made on this point by the Brussels Seminar on the scientific examination of offenders. These recommendations emphasized that social enquiries should be supplemented in certain cases by medico-psychological examinations.

Attention was drawn to the value of team-work, and of the existence of teams comprising social, psychological and medical experts who were used to working together.

In the general opinion, certain precautions must be taken to ensure that the social enquiry and, if there was one, the medico-psychological examination, were not carried out in a way which would harm the personal and family interests of an individual who subsequently might not be found guilty of any offence.

It was observed, however, that, if it were always necessary to await the judicial establishment of guilt before undertaking the enquiry this would result in harmful delays and sometimes in complications of procedure.

An intermediate solution was to seek the agreement of the accused to the carrying out of a detailed enquiry. By this means the scientific enquiry might in most cases be carried out at the same time as the hearing. If, on the other hand, consent were refused, the case would probably prove to be a delicate one in which the time factor would be subsidiary to the need for acting with prudence and certainty.

V. Control of the Practice of Probation

An examination of the systems already in force in the different countries where probation existed, and the different views expressed in the course of the Seminar, showed that control of the practice of probation could not be organized in an identical manner in all the countries concerned.

At the same time it seemed desirable that the judicial authorities should have a part in controlling the practice of probation and that this function should not be an exclusive responsibility of administrative bodies.

The way in which judicial control should be exercised should vary in accordance with the different systems in operation or proposed. Examples were, the system in which control was entrusted to the magistrate who made the probation order, or the system in which this power was given to a special magistrate or body of magistrates who could be consulted by the probation officer in case of difficulty; or again the practice of probation might be supervised by a joint committee with a magistrate as chairman and composed of experts on social and penal questions (e.g.,a doctor, a lawyer and a civil servant).

Whatever the system adopted the magistrate who made the probation order should specify the conditions or requirements to be imposed. He should, however, be careful to specify requirements sufficiently flexible to allow some freedom of action to the organization or officer responsible for supervision.

If the conditions imposed required subsequent modification, the probation officer should apply to the magistrate himself or to the controlling body, according to the system set up for the purpose. In the opinion of the majority, a probation order should be revoked only by the judicial authority which made it.

VI. The Probation Service

1. The administrative structure of the probation service and its organization at national and local levels were problems the solution of which depended on the legal system in force in each country, and on the size and territorial distribution of the population of the country.

2. The Seminar discussed at length the question of specialized training for probation officers.

Should preference be given to professional probation officers specially chosen and trained for the work, or should there be a preponderance of voluntary workers? Or should a mixed system using both professional and voluntary workers, be adopted and, if so, what should be the role of each?

In replying to these questions the members of the Seminar took into account two kinds of considerations: first, the fact that a highly specialized body of knowledge and technique already existed in probation, and, secondly, the great variations which existed from country to country in the field of social welfare services and organizations.

There was no doubt that the success of the probation system depended ultimately on the personal qualities of the probation officers. They had to make use of modern scientific methods in the social treatment of the individual. The era which relied solely on charity, goodwill and simple personal intuition was long past.

With these considerations in mind some countries had deliberately based their probation service on a body composed entirely of professional probation officers. Other countries, on account of financial considerations, geographical factors or local customs, tried to combine harmoniously the services of both types of officer.

Some members of the Seminar thought that advantages were to be found in the work of voluntary officers whose enthusiasm might serve as a safeguard against administrative routine. It was however generally recognized that it was necessary to have a substantial body of professional officers, paid by the state or by social welfare organizations, who might call upon the help of voluntary workers.

In a mixed system, one of the tasks of the professional probation officers might be to control and supervise the work of the voluntary officers. In some cases they might also have the task of enlisting the help of the necessary voluntary workers.

3. The selection and professional training of probation officers were considered. Since the probation officers were the keystone of the system, the candidates for the service must be chosen with the greatest care. Long experience in the United Kingdom provided valuable information on the principal qualities required in a future probation officer. These were: a good intelligence, emotional maturity, good health, and a satisfactory general and professional education.

The entrance tests to be undergone by candidates should be designed specially to bring out possible causes of failure in the task of supervision. Once the candidate was accepted he should be given professional training which would complete any theoretical instruction he had received during his previous studies. Special stress should be laid on psychological and psychiatric problems, and the specialists could best demonstrate these by making use of the practical examples met with by the student in the course of his professional work.

During the discussions stress was laid on the advantages of the method of training probation officers in two stages; the first stage being a general training with other social service workers, the second and more specialized stage being the study of case-work as applied to delinquents.

Professional training should not come to an end on appointment as a probation officer. It should continue as far as possible, throughout the officer's career by means of reading, visits, lectures and discussions organized by the authority responsible for the probation service or by the probation officers through their own organization.

A probation service should normally include officers of both sexes so that the judicial authority could choose for each individual case the person most suited to carry out the task.

4. The question whether probation officers should or should not be civil servants was not a vital one. It appeared essential, however, that control should be exercised either directly or indirectly by public authorities, and that stable and adequate financial status and satisfactory conditions of service should be assured to probation officers so that suitable candidates would be attracted to the service and officers would have the independence and social position essential for fulfilling their function.

It was also desirable that the material aids that modern technique could provide should be at the disposal of the probation officer to save him unnecessary fatigue and loss of time.

Some delegates thought that, subject to safeguards to be determined, probation officers should have funds at their disposal for giving immediate financial assistance in case of need to persons under their supervision.

Finally, it should be possible for probation officers to have easy and rapid access to experts, such as psychiatrists, whose help might be useful or necessary in carrying out their task, as already proposed in the case of preliminary investigations.

TECHNICAL PAPERS

PROBATION AND ITS PLACE IN A RATIONAL AND HUMANE PROGRAMME FOR THE TREATMENT OF OFFENDERS

by N.J. de W. Pansegrouw[1]

It is the purpose of the present paper to state a few of the major themes which are to be dealt with in greater detail in other papers which are to be presented here. For this purpose it is in the first instance necessary to try to outline broadly what probation is and what some of the most significant trends in its present-day development are. At the same time a few general questions will be raised as to the place of probation in present-day criminal policy.

The essential elements of probation

If one wishes to study probation from an international point of view, it is necessary to begin with a basic understanding of, and common agreement on, what probation is and what it is not.

The definition of terms is always to a certain extent an arbitrary matter - the exercise of personal judgment is unavoidable in deciding which elements to regard as essential and which as accidental, or in deciding how broad or how narrow the limits of a definition should be. The formulation of an adequate definition of probation is not, however, primarily an arbitrary intellectual performance. If such a definition is to have any practical value at all, it has to be a realistic description or abstraction of the essential elements of probation as it actually exists in practice. In case of ambiguity of usage, the deciding criterion should be what is most commonly accepted in practice. At the same time it should be recognized that a good definition, particularly if it is to be useful on an international plane, should not be too restrictive or rigid. If a definition is to reflect the essence of a living and growing socio-legal institution, it has also to reflect, at least to an extent, the major internal variations and adaptations and the significant trends of development affecting such an institution.

1/ Section of Social Defence, United Nations Secretariat.

Probation originated and has come to its fullest development in the Anglo-American legal community. In this particular connotation the term is American in origin. The various similar or analogous methods of judicial disposition which originated in other countries under other names, frequently by way of the deliberate adaptation of certain features of probation (e.g. the "sursis") were generally intended to be somewhat different in conception and purpose. It is therefore suggested that the usage of the term probation in Anglo-American jurisdictions should determine the connotation which is to be regarded as most commonly accepted in practice.

The definition of probation adopted in the United Nations publication Probation and Related Measures would seem to satisfy these requirements. Probation, according to this definition, "is a method of dealing with specially selected offenders, and ... consists of the conditional suspension of punishment while the offender is placed under personal supervision and is given individual guidance or 'treatment'".

According to this definition, probation consists of four essential elements. The first - the fact that it is a method of dealing with offenders - does not require special attention here; it should be mentioned merely to differentiate probation from similar methods of treatment in the community when applied to non-delinquents or pre-delinquents. The second element - namely, that probation involves the conditional suspension of punishment - in fact constitutes the essential feature which probation has in common with most of the similar or analogous measures which are on occasion confused with probation or loosely and erroneously identified as such. The features differentiating probation from such analogous measures also constitute the third and fourth essential elements of probation, namely, the fact that persons to be put on probation are specially selected on the basis of personality traits and social environment, and the fact that persons released on probation are provided with actual assistance in the form of personal supervision and guidance during the probationary period.

For the sake of clarity it is necessary to refer to these three separate features of probation in somewhat greater detail, and to indicate at the same time some of the most significant trends in the present-day evolution of probation.

The suspension of punishment

It is important to emphasize that the commonly accepted Anglo-American usage of the term probation does not strictly identify probation with any particular legal device for the conditional suspension of punishment. While the suspension of the imposition of sentence has been the legal device most characteristically associated with Anglo-American probation, several alternative devices have been and are being used to achieve the same general purpose, namely to avoid punishment if possible and to provide an opportunity for supervision or guidance in the community.

The various legal devices used for the suspension of punishment in probation (and which are thus to be regarded as internal variations within the system) differ mainly with respect to the stage of the criminal proceedings at which punishment is suspended. Thus one finds the conditional suspension of criminal proceedings as such, the conditional suspension of formal conviction after the court has established the guilt of the accused,the conditional suspension of the imposition of sentence after the court has formally proclaimed the offender guilty, and - finally - the conditional suspension of the execution of a sentence already imposed. Each of these devices for the conditional suspension of punishment may conceivably be used either by itself or as a constituent part of probation. In Anglo-American jurisdictions the conditional suspension of criminal proceedings as such is not ordinarily permissible. The remaining three legal devices for the conditional suspension of punishment which have been listed above have, however, acquired an established place in Anglo-American probation. The conditional suspension of formal conviction was an essential feature of probation as practised by the English inferior courts prior to the Criminal Justice Act, 1948, and it still persists in outlying jurisdictions deriving their legal precedents from Britain (e.g., certain Indian states). The conditional suspension of the imposition of sentence tends to predominate in American probation practice and is also involved, at least by implication, in present-day British practice. At the same time, the conditional suspension of the execution of sentence is well established as a constituent element of probation in the United States, and in some cases it exists as a discretionary alternative to the suspension of the imposition of sentence.

The fact that probation is not strictly identified with any particular device for the conditional suspension of punishment is of basic importance in understanding the spirit of the system, and in differentiating between what is fundamental and what is accidental in it. The fact is that probation originated as a system of direct personal assistance in the community to offenders who were likely to respond to such assistance - the legal device used for the suspension of punishment in order to make possible the substitution of such personal assistance was of relatively less importance, and was above all a means rather than an end. The origin of probation is in this respect in marked contrast to that of the conditional sentence. The latter measure, which was a deliberate legislative adaptation of probation as it then already existed in England and America, was explicitly intended for offenders who did not need protective supervision in the community but who could be expected to reform by themselves if given the chance. It follows that the conditional sentence was specifically designed as a method which was particularly applicable to those offenders who were likely to be deterred from committing further offences either by the mere experience of being apprehended and convicted, or by the threat of the suspended punishment as such. In this context the suspension of the punishment itself is the essential element and it becomes a matter of very real importance to decide whether the suspension of the imposition of sentence or the suspension of the execution of the sentence is most likely to serve the deterrent purpose of the institution. In probation, on the other hand, the essential agent of reformation is not the threat of punishment itself but the direct personal assistance given to the offender by the probation officer. The threat of punishment is at most a factor which reinforces the efforts of the probation officer in so far as it gives him authority and perhaps a capacity of persuasion which in some cases he might otherwise not have.

The point made here - namely, that the suspension of punishment is a subsidiary feature of probation - is most effectively illustrated by probation as it exists in England under the Criminal Justice Act, 1948. Under this Act probation is no longer tied to another legal device or judicial disposition such as the conditional suspension of the imposition of sentence, but is an independent and self-consistent judicial disposition. In terms of the Act, the court by or before which a person is convicted may "instead of sentencing him, make a probation order, that is to say, an order requiring him to be under the supervision of a probation officer for a period to be specified ..." (section 3(1)). The court does, to be sure, retain the power to sentence the offender at a later date if he should fail to comply with the requirements of the probation order, and in this sense probation continues to imply the conditional suspension of the imposition of sentence. The subsequent sentencing of the offender is, however, only one of the devices available to the court in cases where the probationer fails to comply with the probation order, and it is perhaps desirable to look upon this subsequent sentencing as a measure analogous to the removal of an offender from an open institution to a closed institution if the régime of the former does not appear to produce a satisfactory response.

The fact that the suspension of punishment is a subsidiary (or, as in the case of England, only an implied) feature of probation, and the fact that probation is not to be strictly identified with any particular device for the suspension of punishment, do not mean that the particular device used for the suspension of punishment is of no consequence or significance. In the rational planning of a probation system the choice of the device for the suspension of punishment which is to be used, remains to be a cardinal decision. In this choice it is inevitable that the established precedents of the legal system will play a very important role. It is submitted, however, that the decisive consideration should be the desirability that the device for suspension used should be in as great harmony as possible with the non-punitive, rehabilitative objectives of probation. Seen in this light, the English solution in terms of which probation becomes an independent judicial disposition and the suspension of punishment is completely de-emphasized, probably is far preferable to any other alternative.

The selective application of probation

The selective application of probation rests on the assumption that this form of treatment is appropriate for some but not for all offenders. It also implies that it is not possible to define categorically the types of offenders to whom probation should be applied, but that this can only be determined on an individual basis. Selectivity is an essential prerequisite to effective probation practice - it goes without saying that the release on probation of offenders who are not amenable to this type of treatment can only serve to discredit and weaken the system as a whole. Probation is individualized treatment, and effective probation practice presupposes the intelligent use of scientific knowledge and techniques both in selection for treatment and in treatment itself. Effective probation practice is therefore dependent upon the use of the medico-psychological and social examination of offenders as a guide to judicial disposition as well as to subsequent treatment. The selection of probationers

serves both positive and negative functions: on the positive side, it involves the assessment of the capacity of the individual offender to respond constructively to personal supervision and guidance. On the negative side, it is a matter of eliminating offenders who would either be unsuitable for treatment on probation or who can be dealt with more effectively or more economically in other ways. In the former category would fall dangerous offenders whose treatment on probation would constitute an unjustified risk to public safety, as well as to the public confidence in the system itself. The second class of offenders to be excluded from probation would include cases where some form of institutional treatment is indicated, or certain types of casual or accidental offenders in the case of whom fines, a mere admonition, binding over, or a suspended sentence without probationary supervision may be an appropriate disposition. Probation is not a mere "second chance", or a standard form of leniency applicable to harmless offenders; it is a form of treatment with specific legal and therapeutic content, and care should be taken to exclude from it not only those who are unlikely to respond favourably, or are likely to respond more favourably to an alternative form of treatment, but also those who do not need it.

Probation as personal assistance or treatment in the community

From the preceding analysis it will be apparent that the essence of probation is supervision or treatment in the community. The conditional suspension of punishment without supervision or treatment is something different in kind from probation; it is in no way a substitute for probation, and may indeed have its own valid sphere of application next to probation.

It would serve little purpose to define too rigidly the form or the contents of probation supervision or treatment. The use of the two terms, supervision and treatment, in itself indicates the fact that the personal assistance given to the probationer by the probation officer has undergone an evolution - the term supervision alone is becoming increasingly unsatisfactory. Probation supervision, the term supervision notwithstanding, never has been mere police surveillance or watchfulness, but always has involved a personal relationship between the probation officer and the probationer. The classic description of the duties of the probation officer is contained in the British Probation of Offenders Act, 1907, where the probation officer is instructed to "advise, assist and befriend" the probationer. At present, probation supervision and treatment in different jurisdictions still ranges from religious counselling or the unskilled advice of volunteer probation officers, on the one hand, to professional social case work, sometimes supplemented by psychiatric treatment, on the other. The important point is, however, that it always involves individual guidance and assistance of some kind, and that it is directed towards the social rehabilitation of the offender. The general trend certainly is in the direction of increasing specialization and professionalization, and the tendency would seem to be towards the development of probation treatment as a form of "social case work in an authoritarian setting". The "authoritarian setting" is provided by the legal situation of suspended punishment, which exists explicitly or implicitly, but the essence of the measure is treatment in the form of social case work.

The place of probation in a humane and rational programme for the treatment of offenders

It remains to make a few general remarks on the place of probation in a modern programme for the treatment of offenders.

Probation is the jewel in the crown of Anglo-American criminal justice, and perhaps its proudest contribution to modern criminal policy. It is not, however, a cure-all, and the realistic delimitation of its application is equally important as the bold development of its potentialities.

Probation is part of a broader stream of thought and practice in the field of the treatment of offenders, namely, the increasing systematic utilization of the knowledge of the behaviour sciences for the individualization of treatment. The medico-psychological and social examination of offenders as a guide to judicial disposition and to subsequent treatment is, of course, the cornerstone of this approach. Probation itself is only one, albeit one of the most significant and hopeful, of several measures of judicial disposition and treatment to which the modern court and correctional system should have recourse, taking into account the medico-psychological characteristics and social circumstances of the offender. Where other things are equal, its manifold social advantages would indicate the use of probation in preference to almost any other method. The critical problem of modern criminal policy is, however, the clear formulation of the indications and counter-indications for the use of specific treatment measures.

As a concluding remark it may be appropriate to emphasize one great potential contribution of probation to the development of a rational and humane programme for the treatment of offenders which is at the same time both sufficiently diversified and unified. Probation has produced the most specialized and professional substantial body of correctional personnel at present available, and the systematic use of probation personnel or of their specialized skills for purposes other than probation supervision constitutes a major opportunity for growth and development in the correctional services. In Anglo-American jurisdictions the probation officer already plays a vital role in the pre-sentence social examination of offenders, in parole supervision, and in after-care following final release from institutions. It should be recognized that the cardinal principle of probation treatment - the deliberate and constructive use of the personal relationship between the probation officer and the probationer for the re-direction of the attitudes and behaviour of the latter - is also the cardinal principle of correctional treatment in other settings, and the training and employment of personnel may with profit be planned on this basis.

PROBATION AND RELATED MEASURES IN EUROPEAN LEGAL SYSTEMS: A COMPARATIVE SURVEY

by Pietro Nuvolone[1/]

1. Introduction.[2/] In the second half of the nineteenth century, the evolution of the criminal law was marked by a definite advance under the influence of the doctrinal movement which, springing from philosophical positivism, broke down the barriers of the traditional theory of crime and punishment and brought out the part played in crime by natural and social factors. It then became evident that the threat of punishment was frequently inadequate as a deterrent and that the application of punishment was not a suitable method of preventing recidivism.

This was the origin of the new conception of social defence, based not on moral guilt, but on criminal propensity and on a series of measures arising mainly from belief in the possibility of the spontaneous reform of the first offender and tending to reduce punishment to the mere passing of a sentence. The results are now part of the common heritage of many legal systems, whereas the philosophical movement which provided the stimulus has had its day.

The opinion of a large number of criminologists who acknowledged the ineffectiveness of short terms of imprisonment for the first offender was decisive in the promotion of measures of social defence.

At the origin of new measures based on a different theory, we find the entirely modern principle of individual prevention (prévention spéciale), a principle which sooner or later came to inspire both legislation and judicial practice, from which have sprung legal institutions such as probation, suspended sentence, judicial pardon, and liberté surveillée (supervised freedom in respect of juveniles).

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2/ The task of preparing this report had originally been entrusted to my distinguished colleague, Mr. Giuliano Vassalli, Professor of Criminal Law in the University of Genoa. Unfortunately, his numerous commitments made it impossible for him to go on with it, but the material he had already prepared, which he was good enough to place at my disposal, has been of great service, as has the active collaboration he has given me in discussing the fundamental ideas of the report. I take this opportunity to express to him my sincere appreciation.

2. Main features of probation in the criminal law of the Anglo-Saxon countries and concept of related measures. My first task is to delimit the scope of our survey. This is not an easy task, for the subject lends itself particularly to straying into analogies and there is a temptation to wander outside the limits of the theme. I am of the opinion that, in any discussion on probation, the systems of the United Kingdom and of the United States of America should be taken as the basis of reference, and since the starting point of the comparative argument is historical, it is necessary to examine the system of probation in the countries where it took root.

The essential elements of the probation system in Anglo-Saxon criminal law are the following:

(a) A suspension of the pronouncement of sentence;

(b) An order of the judge specifying the conditions that the offender must observe for a stated period if the suspension is not to be revoked;

(c) A preliminary enquiry into the personality of the offender;

(d) Supervision and guidance by the probation officers of persons placed on probation;

(e) Power to revoke the suspension of sentence if the conditions imposed are not observed.

It is outside the scope of this report to describe the details of a system to which the English Act of 1948 gives the fullest embodiment; all that is needed here is a general outline as a basis of comparison with other European legal systems.

In probation - which presupposes a conviction - there are two elements, procedural and substantive.

The procedural aspect covers the making of a probation order, that is to say, the instrument by which, without actually passing sentence, the judge imposes certain obligations on the person found guilty.

As to the substantive aspect of the system, there is on the one hand a conditional suspension of the State's power of punishment, which, if the conditions laid down in the order are fulfilled, will lead to the lapse of that power; and, on the other, a specific measure by which the judge imposes on the individual certain obligations, both negative and positive, in accordance with the concept of individual prevention.

The system of probation in Anglo-Saxon countries is thus seen to embrace at one and the same time a measure of clemency of the traditional type and a measure which may be regarded as falling within the category of social defence by virtue of the aim pursued - which is the very reason for its existence - and of the particular method of its application.

Since probation, as stated above, presupposes a conviction it cannot be held to derive from the concept of "dangerousness" (périculosité) or criminal propensity as recognized by several legal systems. On the contrary, it is based on a flexible and empirical idea of delinquency which combines in a living fashion the concepts of freedom and compulsion.

On the basis of these ideas, we shall endeavour to define the essential features of certain related measures. In my opinion, if a parallel is to be drawn between probation and any other measures, the latter must necessarily possess the two following features:

(a) That of substitute for a penalty, that is to say, a measure with a different legal substance, which is decided upon immediately after conviction, whether it be formal or not, under criminal law;

(b) A probationary period, that is to say, the application of a positive or negative measure differing from the penalty, with the understanding that a penal sanction may be subsequently imposed in the event of the failure of the measure in question.

In view of paragraph (a) above, I do not propose to consider here the particular treatment - conditional release etc. - which may replace a sentence the execution of which has already begun; neither shall I examine those measures which do not presuppose a conviction under criminal law, such as supervised freedom in respect of juveniles and adults not responsible for their actions etc.

In the light of paragraph (b), I should also exclude the study of measures which apply straightaway in place of the sentence without taking into account the possible results of a probationary period. Nevertheless, considering that the idea of a probationary period in the widest sense of the term includes also the individual reaction to a measure which is not a penalty and, moreover, does not entail conditions or supervision, I have found it necessary to deal in this report with the judicial pardon. From a practical standpoint, it would have been difficult to disregard this institution in view of its importance in several European legal systems and of the fact that it frequently precedes probationary treatment.

To sum up, the measures I propose to examine are the following:

- probation (as a typical institution with its own features);
- probation with a suspended execution of sentence;
- suspended sentence as a measure in itself;
- suspended sentence with supervision and guidance;
- judicial pardon;
- supervised freedom (liberté surveillée) when applied to persons responsible under criminal law.

3. Probation in Sweden, Norway and Belgium: the problem of jurisdiction. With the exception of Norway, Sweden and Belgium, probation so far has been applied only to a very limited extent in the legal systems of continental Europe.

As regards Sweden, a law which came into effect in 1944 allows the judge to suspend sentence in all cases where the offence of which the accused has been found guilty carries a penalty of up to 1 year's rigorous imprisonment or 2 years ordinary imprisonment. The suspension cannot be granted if during the five years preceding the commission of the offence the accused received any sentence involving deprivation of liberty.

The period of probation is for three years, but if the offender has been sentenced to a fine it is reduced to two years. Unless provision to the contrary is made, the person on probation is placed under the supervision and guidance of voluntary workers appointed by the judge. The conditions which may be imposed on the person on probation are as follows:

(a) he may have to abide by certain directives as regards education, employment, living quarters and district of residence, the use of his time;

(b) he may be required to abstain from alcohol;

(c) he may have to submit to a prescribed medical treatment and to a periodic check of his health;

(d) he may be required to submit to certain restrictions in the spending of his earnings.

In most cases, the probation order is preceded by a preliminary enquiry with a view to allowing the court to take a decision and adopt the appropriate measures with a full knowledge of the facts.

That system and the majority of those which I shall examine later give the judge the power to make a probation order which may thus be fairly described as a conditional waiver of the sentence.

There are, nevertheless, cases in which it would be incorrect to speak of a waiver of the sentence; it is rather waiving the prosecution of the accused, which involves a transfer of jurisdiction from the judicial authority to the Public Prosecutor.

Continental legal systems are in general ill-suited to this transfer of jurisdiction since they charge the Office of the Public Prosecutor with the duty of instituting proceedings in all cases where there are indications of guilt, leaving it to the judge to convict and pass sentence where the person is found guilty.

Three exceptions to this general rule may, however, be mentioned:

In Norway, the Criminal Procedure Act of 1887 gave the Public Prosecutor unrestricted powers of deciding whether or not the offender should be prosecuted. As a result of subsequent amendments, such decision has become a conditional one, and a person who has not been brought to trial may be placed under supervision and guidance.

In Denmark, the Office of the Public Prosecutor has the discretionary power not to institute legal proceedings in the case of a minor misdemeanour or where it is desirable to spare the offender criminal prosecution. In such cases, the Public Prosecutor may impose certain conditions on the offender.

In Belgium, on the initiative of Mr. Herman Bekaert, Attorney-General of the Ghent Court of Appeal, an experiment in probation was started in 1946:

> "Without any specific legal provision" - writes Mr. Herman Bekaert, - "under the legal mandate which they exercise in the hierarchy of the State, the Public Prosecutors within the jurisdiction of the Ghent Court of Appeal, by virtue of their personal responsibility in the prosecution of offenders, have agreed for the first time in Belgium to conduct an experiment in probation. In a circular dated 26 February 1946, they were made aware of the fundamental ideas of probation and of the conditions under which the Attorney-General contemplated the possibility of accepting responsibility for a suspension of proceedings during such probation."

The suspension of proceedings is subject to the following conditions:

(a) that the case involves an offence punishable with a sentence of imprisonment not exceeding five years;

(b) that the accused has not a heavy criminal record;

(c) that he admits his guilt;

(d) that he agrees to accept probation.

If these conditions are fulfilled, the Public Prosecutor orders a social inquiry and a medical examination of the offender and takes the initiative in asking the judge for a period of probation of three years. He also informs the offender and the person whose duty it is to assist him in his efforts at rehabilitation, of the conditions of probation.

From the point of view of comparative law, this experiment is particularly interesting because the initiative is left to the Public Prosecutor, and also because it is an example of "Praetorian" innovation in criminal procedure which is as rare on the continent of Europe as it is common in England.

4. Probation and the penal law relating to juveniles in Italy, Sweden, France, Austria and Germany; the judicial pardon. In several countries the main features of probation are to be found in the penal law relating to juveniles, whereas in those same countries the system is not yet applied to adults. It must be pointed out, however, that in the majority of cases, whenever the judge refrains from

passing sentence, his decision is irrevocable and is the beginning of a special treatment to be applied with a view to the social rehabilitation of the juvenile delinquent.

In Italy, there is no criminal responsibility for juveniles under fourteen years of age. In the case of juveniles between fourteen and eighteen years, the magistrate must ascertain in each case whether the offender is responsible or not. Full criminal responsibility begins at eighteen. Article 19 of Decree No. 1404 of 20 July 1934, on the institution and operation of juvenile courts, reads as follows:

> "In cases where the juvenile court considers that the offence committed by a person who has not yet reached the age of eighteen makes the offender liable to a sentence involving deprivation of liberty for a period not exceeding two years or to a fine not exceeding 120,000 lire, even if it is accompanied by a sentence of imprisonment, it may grant a judicial pardon at the end of the judicial inquiry or at the time of passing sentence."

Article 169 of the Penal Code gives the same powers to ordinary judges.

The "judicial pardon", which is merely a form of abstention from passing sentence, has the effect in Italian law of expunging the offence.

Article 27 of the decree of 20 July 1934 further provides that the juvenile court, when granting a judicial pardon, must consider whether it is desirable to place the juvenile in the care of qualified persons or in a social welfare institution approved by the court, or to order his detention in a reformatory for juvenile delinquents. In the first case, a member of the court must interview the juvenile every three months in order to satisfy himself personally of the progress of the work of re-education. There is thus a direct connexion between the principle of abstaining from passing sentence and that of supervision and guidance.

The Swedish system has a good deal in common with the one I have just outlined. A law of 1 January 1938 empowers the courts to waive sentence in the case of juvenile delinquents between the ages of fifteen and eighteen, whatever the punishment laid down for the offence in question; in this case, the judge sends the juvenile directly to a youth prison if he considers this to be the most appropriate treatment for the rehabilitation of the offender. After one year at the institution, the juvenile may be released conditionally, and he may be unconditionally discharged at the end of two years. The principals of these institutions have full authority to fix the period of conditional freedom and they may supervise the juvenile's conduct with the assistance of voluntary workers.

A decree of 1944 gives the Public Prosecutor the power, in certain circumstances, to waive proceedings against juvenile delinquents under 18. In such cases, the competent authorities must take the appropriate steps.

In France, the system of supervised freedom (liberté surveillée) already provided for under the law of 22 July 1912, since abrogated. Today it is governed by the Order of 2 February 1945, as amended by the law of 24 May 1951,

and by the decrees of 1 July and 15 October 1945. All the measures of rehabilitation laid down in the law of 24 May 1951 may be combined with supervised freedom, as for instance where the juvenile is handed over to his parents or to the person in charge of him or some other trustworthy person, or again, if he is sent to an institution or a public or private establishment for schooling or vocational training.

Supervised freedom may also be ordered by the children's judge in cases where:

1. he refrains from proceeding to conviction (liberté surveillée provisoire);

2. he refrains, after conviction, from making a decision on the measure or penalty to be applied (liberté surveillée préjudicielle).

The juvenile under supervised freedom may be placed in the care of a voluntary case worker appointed by the children's judge, who must be, above all, an active and alert educator. Permanent officers of civil service status who are court assistants have also been appointed with the following duties:

1. directing and co-ordinating the activities of the voluntary workers and recruiting and training them;

2. exercising direct supervision over the juveniles personally entrusted to them by the judge;

3. administering the service of supervised freedom, preparing incidental proceedings, keeping the records and providing the judge with information.

In Austria, the Federal Act of 1928 introduced into the legal system the suspension of sentence in the case of juveniles liable to imprisonment or a fine provided that the judge is convinced that such action is not contrary to the interests of justice or of the accused himself. The suspension is subject to conditions which must be observed during a certain period, and the juvenile must be placed in the care of persons specially qualified to help him.

Germany has also introduced a very interesting reform and is in the process of making an experiment which deserves mention. In November 1951, in conjunction with the juvenile courts sitting at Bonn, Essen, Freiburg, Hanover and Stuttgart, agencies were set up for the purpose of supervising juvenile delinquents who, under recent legal provisions, had been placed on probation. The judge applying this procedure at the same time refrains from taking any penal action.

5. The suspended sentence (sursis): general observations. As we have seen, few countries on the continent of Europe provide for a system of probation, the origin and specific features of which correspond to those characteristic of that institution in Anglo-Saxon countries. On the other hand, measures of supervision and guidance have frequently been grafted on to the pre-existing system of suspended sentence, and this development is apparent in general penal

law as well as in special laws applying to juvenile delinquents.

An examination of the important institution of suspended sentence is therefore called for.

The essential elements of suspended sentence are as follows:

(a) pronouncement of sentence;

(b) an order suspending execution of the sentence provided that the offender does not commit a further offence within a certain period;

(c) the revocation of the order if a new offence is committed;

(d) the lapsing of the sentence if, during the probationary period, the person under suspended sentence does not commit any further offence.

There are two important differences between suspended sentence and probation:

(a) suspended sentence defers the execution but not the pronouncement of the sentence;

(b) the condition - that no further offence shall be committed - is a purely negative one, and there is no provision for appropriate measures for the social rehabilitation of the offender.

From the procedural standpoint, suspended sentence may be regarded as a conditional stay of execution of sentence; if the conditions imposed are observed the procedure of execution will be finally abandoned.

Through suspended sentence, the State suspends its power of punishment and if the offender does not commit any further offence during a prescribed period that power lapses. Thus it may be said that through suspended sentence the State's power of punishment is subject to a defeasance clause (a condition tending towards its annulment).

I do not share the opinion of those who regard suspended sentence as having the effect of expunging the offence when the conditions imposed have been fulfilled, for it is not the offence which is wiped out but merely some of its consequences.

Although inspired by the ideas of special prevention, suspended sentence falls into the category of acts of clemency and, as such, is subject to the traditional ideas of punitive criminal law. Considering its juridical content, it cannot thus be regarded as a measure of social defence, at least in the technical sense in which modern criminologists use that term.

6. The suspended sentence (sursis) in France, Belgium, Italy and Switzerland. Suspended sentence originated in Franco-Belgian law, making its first appearance in France in the Bérenger draft law of 26 May 1884, although it was first given

legislative recognition in the Belgian law of 31 May 1888. It was adopted in France in the law of 26 March 1891, and was subsequently introduced in Luxembourg (law of 10 May 1892), in the Swiss Canton of Geneva (law of 29 August 1892), in Portugal (law of 6 July 1893), in Norway (law of 2 May 1894), in the Swiss Cantons of Vaud (1897), Valais (1899) and Tessin (1899).

As regards Italy, the first draft law was that of 2 March 1893 which, after many amendments, was adopted and promulgated in its final form in law No. 267 of 26 June 1904. The provisions of this law were subsequently embodied in the Code of Criminal Procedure of 1913. Today suspended sentence is governed by Articles 163 et seq. of the Penal Code of 1930 and by the corresponding provisions of the Code of Criminal Procedure.

Suspended sentence was further adopted in Denmark in 1905 and in Sweden in 1906.

The Belgian law of 14 November 1947, which superseded the law of 1888, lays down more liberal conditions for the granting of suspended sentence and is in the following terms:

> "In sentencing to one or more penalties where the term of imprisonment, as the principal penalty, does not exceed two years and the offender has not previously been sentenced to a penalty in respect of a crime (peine criminelle) or to a principal penalty of imprisonment for more than three months, the court may, in a decision giving the reasons, order a suspension of execution of sentence for a period which it shall specify starting from the date of the sentence, but not exceeding five years. A sentence, the execution of which is thus suspended, shall be deemed void provided that during the specified period the offender is not sentenced again to a penalty in respect of a crime or sentenced to a principal penalty of imprisonment for more than one month. In the opposite case, the suspended sentence and that arising from the new conviction shall be consecutive."

The French law of 26 March 1891 reads as follows:

> "Where the offender is sentenced to imprisonment or a fine, and provided he has not previously been sentenced to imprisonment for a crime or misdemeanour under ordinary penal law, the court may, by the same decision and in giving the reasons, order a suspension of execution of the sentence. If during a period of five years from the date of the sentence the offender has not been prosecuted and sentenced for a crime or misdemeanour under ordinary penal law to imprisonment or a more severe penalty, the sentence shall be deemed void. In the opposite case, the first sentence shall first be served and may not run concurrently with the second."

Special legislation exists, however, laying down exceptions to the foregoing provisions and expressly excluding the perpetrators of certain offences from the benefit of the suspended sentence. The relevant laws may be classified in two groups:

- those protecting the national economy and the financial interests of the State, and

- those safeguarding morals, health and public security.

A comparison between Belgian and French legislation shows that the Belgian system is at the same time more liberal and more severe; more liberal with regard to the criminal record of the accused and the conditions of revocation, and more severe as regards the length of the sentence, the execution of which may be suspended.

It should also be noted that the Belgian law leaves it to the judge to fix the period of suspension of sentence, provided that it does not exceed five years, whereas the French law fixes the period of suspension for every sentence at five years.

The Italian system, with some modifications, is based on the Franco-Belgian model. The conditions of suspended sentence are as follows:

(a) The sentence of rigorous imprisonment /reclusione/ or ordinary imprisonment (arresto) must not exceed one year for a misdemeanour (three years for juveniles and two years for persons over 70 years of age) and two years for a minor offence (contrarvenzione); where a fine is commuted to a sentence of imprisonment the period of such imprisonment must not exceed the limits mentioned above.

(b) The offender must have had no previous sentence, not even a fine.

(c) The execution of the sentence must not be followed by any security measure against the offender.

(d) The judge must consider in each case the likelihood of the offender not committing a further offence.

Suspended sentence may be revoked:

- if the offender commits a further misdemeanour or crime or if he is guilty of a minor offence of the same nature as the preceding one;

- if the offender receives a further sentence for an offence committed at an earlier date.

The probationary period is five years in the case of misdemeanours and crimes and two years for minor offences.

Suspended sentence may be made conditional on the fulfilment of certain requirements, such as the restitution of stolen property or reparation of the damage suffered by the victim. The draft for the reform of the Penal Code at present under consideration contemplates the possibility of a wider application of suspended sentence.

What in my view merits particular attention in the Italian system is the judge's discretion to form an opinion of the various aspects of the offender's personality before granting suspended sentence.

Swiss legislation is based even more firmly on this principle. Indeed, the Swiss Code stipulates that, when a sentence of imprisonment does not exceed one year, or in the case of a jail sentence /arrêts/ the judge may suspend execution of sentence if the offender's previous record and personality suggest that such a measure will deter him from committing further misdemeanours or crimes, and provided that during the five years preceding the offence the offender has not served in Switzerland or abroad any sentence involving deprivation of liberty for a wilful misdemeanour or crime and, finally, provided that the offender, so far as is possible, has made good the damage caused.

These provisions are particularly interesting for the three following reasons:

(a) The restriction of the application of suspended sentence concerns only sentences imposed during five years preceding the offence;

(b) The suspended sentence is excluded only if the previous sentence was pronounced for a wilful misdemeanour or crime;

(c) The judge must have ample information on the offender's character.

In conclusion, it may be said that, as regards suspended sentence, Swiss legislation is among the most advanced of European legal systems.

7. Suspended sentence with supervision and guidance in some European legal systems; a Belgian project. In recent years, as I have said, there has been a tendency to supplement suspended sentence by some of the characteristic features of the probation system in the United Kingdom and the United States of America.

In the Netherlands the "sentence on probation" was introduced in 1915. The law provides that every sentence depriving the offender of liberty for a period not exceeding one year may be conditionally suspended for a period not exceeding four and a half years. In pronouncing suspension, the judge may make certain arrangements for the offender and ask a voluntary society to exercise guidance over him. The society must make periodical progress reports on each case to the Minister of Justice and inform him immediately of any breach of the conditions laid down by the judge. The Netherlands system is based on the active collaboration of voluntary workers who carry out the instructions of the specialized probation officers to whom the most difficult cases are entrusted.

In Sweden the law establishing a system of probation in the full sense of the word at the same time made improvements to the institution of suspended sentence, supplementing it by provisions relating to supervision and guidance.

I shall not refer again to the conditions and procedure of the Swedish system which have already been examined in paragraph 3 above. Normally, unless the judge imposes special conditions, he merely suspends execution of sentence. If special conditions are laid down, he suspends the sentence itself.

Norwegian law provides for the same alternative measures.

In Sweden and in the Netherlands, the commission of a further offence does not necessarily involve revocation of suspension, as in the other continental countries. On the contrary, in this respect the judge has discretionary powers.

Article 56 of the Danish Penal Code provides for suspension in the case of sentences not exceeding two years' imprisonment. The offender may be placed in the care of societies which in turn arrange for a qualified person to guide and assist him. If the sentence of imprisonment is a very short one and has been imposed for acts of exhibitionism, probation is applied only if the offender first agrees to undergo psycho-therapeutic treatment.

In Switzerland also there is a system of supervised freedom (patronage) as a measure supplementing the suspension of sentence, under which the judge may hand over the offender on suspended sentence to a public or private body appointed to assist, and exercise discreet supervision over, offenders.

The Belgian draft law of 18 May 1948 - the truly commendable work of Professor Cornil -, though it has not yet been passed, nevertheless deserves special mention. The main features of this scheme are:

1. Suspension of execution of sentence for an offender without a criminal record if he is sentenced to one or more terms of correctional imprisonment not exceeding five years;

2. With the offender's consent, a preliminary enquiry into his personality and environment;

3. The imposition by the magistrate of special conditions appropriate to the case to be observed by the offender;

4. A special commission as the authority for making a probation order;

5. The establishment of probation officers.

A draft bill drawn up subsequently and tabled in 1952 follows the same principles with certain amendments which improve the earlier draft.

France, the cradle of the system of suspended sentence, has also given an entirely original slant to the idea of probation. Following a decision of the Minister of Justice in October 1950, a most interesting experiment is now being carried out in four judicial districts. When the court passes on an offender one or more sentences of imprisonment amounting to not more than one year in all, the Public Prosecutor responsible for the execution of the sentence is empowered to suspend execution and to apply probation. This probationary period lasts two years during which time the offender is placed under the supervision of a case-worker appointed by the Chairman of the Prisoners' Aid Committee. If the two-year period is completed successfully the Public Prosecutor takes the initiative in applying for a pardon.

Furthermore, the French Government has tabled before the National Assembly a draft law the main features of which are the following:

1. The granting of probation lies exclusively within the competence of the court trying the case and is related not only to the objective nature of the offence and the seriousness of the facts, but also to the personality of the offender and his possibilities of social re-adjustment. It is complementary to the old institution of suspended sentence as such and is not subject to the previous consent of the offender.

2. The new system will be applied only to correctional penalties (peines correctionnelles). Offenders with a criminal record may, however, benefit by it provided any previous sentence did not exceed one year's imprisonment.

3. The probation measure will be revoked automatically if within a period of five years the person on probation receives a further sentence involving deprivation of liberty.

In Austria, suspended sentence with a probationary period of not more than five years may be granted by the court in all cases where the offender is sentenced to a term of imprisonment or a fine. The judge has discretionary powers, the exercise of which is not hindered by the offender's criminal record, but he must take into consideration the offender's personality. Supervision and guidance are undertaken by individuals, services or societies entrusted with the mission to assist orphans, juveniles and released prisoners.

8. The most recent innovations in penal law relating to juveniles in Belgium and France. The most recent developments in the penal law relating to juveniles show the influence of the idea of probation. A distinction must be made, however, between cases where measures of supervision and guidance either replace or accompany a penalty based on the principle of criminal responsibility and cases where such supervision and guidance are provided for children who are not criminally responsible, or are merely neglected or in moral danger, for in those cases what is involved is an independent measure unrelated to moral responsibility.

I propose to examine the former cases.

In Italy, the judge may conditionally suspend execution of a sentence imposed on young persons between the ages of 14 and 18 if the sentence does not exceed three years' rigorous imprisonment or ordinary imprisonment and in the case of a fine, it does not exceed 120,000 lire. In such a case the judge may hand over the juvenile to a specially qualified person or to a welfare institution, or alternatively he may decide that the juvenile be sent to a reformatory. The judge must periodically investigate the progress of re-education.

In France, under the Order of 2 February 1945 (see also my previous remarks on practical experience and the draft law of 1952) suspension of sentence with probation may be granted to juveniles who are unable to benefit from any other more liberal measure. In making an order of supervised freedom, the judge is

empowered to place the juvenile in the care of case workers. When the latter are voluntary workers they are under the supervision of permanent officers appointed by the Minister of Justice and attached to the juvenile courts. As I have already stated, these permanent officers have civil service status and act as assistants to the court.

The same system applies in Belgium where the duties of the permanent child welfare officers are laid down in great detail in the Royal Decree of 6 July 1951. This Decree also defines the legal status and method of recruitment of these permanent officers. Special mention should be made of the provision whereby a candidate for the post of permanent officer must hold either a social auxiliary's or a social assistant's diploma granted in conformity with the provisions of the Royal Decrees regulating their issue or a diploma testifying to the holder's knowledge in the educational and social field.

9. Comparative summary of different aspects of the problem. To sum up the preceding paragraphs, the European laws on probation or related institutions may be classified under the following headings:

(a) Nature of the measure and procedural phrase of its application

Some legal systems provide merely for suspension of execution of sentence, whereas others accompany such suspension by measures of supervision and guidance. Others provide for suspension of pronouncement of the sentence and not of its execution. Sometimes, finally, it is possible for the actual proceedings to be suspended.

Under some legal systems, probation is applied only to juveniles, whereas in others it applies to either juveniles or adults.

In some countries the conditions of probation are purely negative; in others they are positive as well. As has been seen, probationary treatment may sometimes also be prescribed as the result of a simple renunciation of the power of punishment.

Generally speaking, probation is ordered after sentence has been passed, but there are also cases where the sentence itself is suspended. There are also cases where, if there is a suspension of proceedings, a probation order is made before conviction.

It may be said that with the exception of Norway and Sweden, continental European law remains faithful to the system of suspended execution of sentence for adults, whereas in the case of juveniles other systems have been introduced. Moreover, whereas several legal systems have adopted supervision and guidance, the general tendency - at least for adults - is not to make them the rule.

(b) Power to order and revoke probation

With the exception of certain cases in Swedish law, the judge is the authority competent to order or revoke probation; occasionally - but very rarely - the Public Prosecutor is the authority. In countries of Latin law

the principle of the division of powers is opposed to any encroachment of the executive on the competence of the judiciary. On the other hand, that principle is not an obstacle to the judicial control of probation, and it may even be said that the judge is naturally inclined to watch over the proper execution of measures he has ordered. In this respect, we may mention the rôle given to the "supervising judge" by the Italian Penal Code.

(c) Supervision and guidance: competent authority and organization of the service

Supervision is exercised by natural persons or corporate bodies - private or public - which appertain, broadly speaking, to the category of administrative functions. They usually carry out their duties under the judge's supervision, but sometimes, for instance in Sweden, they enjoy very wide powers.

The probation service is organized in different ways. There are four basic types:

(1) voluntary service of an occasional nature;

(2) voluntary but organized service;

(3) voluntary service combined with a State or, at least, a public service;

(4) State service.

The second and third types are the most common. Nevertheless, the first is found in the law relating to juveniles in several countries.

(d) Limits of application

These limits are both objective and subjective. The former relate to the seriousness of the offence; the general tendency is to fix very strict limits.

Subjective limits depend mainly on the criminal record of the offender, account being taken of his personality and of the prospects, more or less favourable, of rehabilitation. The general tendency is towards a certain strictness, but a distinction must be made between legal systems which take into account all previous offences (France, Belgium, Italy etc.) and those providing that account will only be taken of offences committed during a specified period (Sweden, Switzerland, Denmark).

(e) Conditions of revocation

With few exceptions European law regards as a cause of automatic revocation the commission of a further wilful crime or offence during the probationary period.

10. Conclusions. Although conclusions from this comparative survey will be drawn by other rapporteurs who have been especially entrusted with that task, a few final observations are nevertheless called for.

A. The systems of probation and suspended sentence, each in its own field, are justified from the historical, logical and psychological standpoint.

B. Some of the characteristic features of probation should be incorporated into the system of suspended sentence. If that were done, the suspended sentence would have the salutary effects for which it was established and would no longer depend solely on the ability of the offender to reform unaided.

C. It is greatly to be hoped that in the case of several categories of first offenders, both adults and juveniles, European legal systems will adopt the system of probation as practised in the United Kingdom and the United States of America.

As I have already remarked, when the judge, using his discretionary powers, suspends sentence, he suspends at the same time the criminal proceedings. If the defeasance clause materializes, the suspension becomes definitive, which amounts to the lapse of the power of punishment. When suspension is granted before sentence is pronounced, the judge takes this decision before the normal conclusion of the criminal proceedings. Nevertheless, he must logically have obtained evidence of the offender's guilt before suspending sentence, even if proof of guilt is not legally required in a formal judgment.

In my opinion, the judge can establish the accused's guilt only when the hearing has been completed and the procedure is sufficiently advanced to enable him to pass sentence. Only after stating the reasons for his being convinced of the accused's guilt and having made his decision in this respect, can he order a stay of proceedings in order that the probation procedure may begin.

From the point of view of juridical logic, there can be no serious objection to suspension of sentence on the part of the continental European legislators. In this respect we share the particularly penetrating opinion expressed by Mr. Marc Ancel in his essay le procès pénal et l'examen scientifique du délinquant (Criminal proceedings and the scientific examination of the offender).

In traditional criminal procedure, besides declaration of guilt is the logical and chronological premise of the passing of the sentence, and in this connexion it may be recalled that this distinction is recognized by existing procedure in several countries, especially that followed in the French Assize Courts, which falls into two stages: first, conviction, then the passing of sentence.

If this question is examined from the standpoint of criminal policy and forensic psychology, it will be found that there are arguments in favour of as well as against this procedure. That is also the view taken in the United Nations report, as well as in Professor Thorsten Sellin's very interesting essay "Probation in the United States".

After all, a universally acceptable solution of this problem would be difficult to find, because allowance must always be made for the psychology of different communities and of their individual members.

D. The necessity for bringing the system of probation into line with the principles of the division of powers and of the legality of the penal and social defence measures which govern almost all Continental systems will doubtless make it essential for these systems to define in greater detail than has been necessary in Anglo-Saxon countries those cases in which probation is applicable, the length of the probationary period, the judge's powers and the relationship between the judge and the persons responsible for supervision and guidance.

E. A medico-psychological examination and a social enquiry are essential features of the probation system and, especially in the case of juvenile delinquents, are provided for in several European legal systems. Whether such enquiries into an offender's personality and environment should precede or follow sentence is a controversial question. Nevertheless, an enquiry made before sentence clearly enables the judge not only to determine the conditions to be imposed on the offender but to arrive at an enlightened decision on the value of probation itself in the case in question. In my view, the importance of this problem is not confined to the field of probation. Almost all criminologists consider that criminal proceedings should always include a preliminary examination of the accused so as to enable the judge to apply the treatment most appropriate to the needs of the individual. Such was the conclusion reached by the Hague Congress in 1950. In any case, it is only logical that if there is to be a preliminary enquiry it must precede the probation order.

During a meeting on 12 February 1949, the members of the French Commission appointed to study the system of probationary supervision were agreed in proposing the system of dividing the proceedings into two stages, that is to say, convicting the accused and ordering a social enquiry, to be followed by his second appearance before the judge for sentence. Such a procedure would link up perfectly well with the system of suspended sentence, since the application of suspension is always based on formal conviction. On the other hand, in single-phase procedure where the judge pronounces both conviction and sentence, considerable difficulties would be bound to arise; in the first place, the accused would be kept in a state of uncertainty during what might be a long period. Again, social enquiries before conviction might prejudice the accused, because it would be difficult to disregard any information concerning the criminal act out of which the proceedings arose, and it is to be feared that a social enquiry might indirectly and to a certain extent influence the mind of the judge.

The obtaining of the consent of the accused or of his legal representative would obviate many of these difficulties, and a social enquiry could be ordered at any point in the proceedings, even during the judicial enquiry. With the accused's consent, neither would there be any insuperable objection to an enquiry after conviction, even though it would entail a longer period in custody. If the enquiry were made conditional on the offender's consent, the judge, in convicting the accused, could declare his intention not to pass sentence, for a certain period, in order that the accused might have time to apply for probation and to consent to the social enquiry. If at the end of that period the accused had not given his consent, the judge might pass a sentence which, of course, would be subject to the normal right of appeal.

F. As regards the accused's consent, it may be remarked finally that outside the penal law relating to juveniles which, being designed to re-educate rather than to punish, is essentially protective, Anglo-Saxon criminal law requires this consent. On the other hand, it is not compulsory in legal systems applying probation as a complementary measure to suspended sentence. There is one exception to this rule, however, in the Belgian draft of 18 May 1948, which, though following the system of suspended sentence, requires the consent of the accused.

I consider it desirable always to insist on the accused's consent whenever probation is to be ordered. There are three reasons for this: first, respect for individual liberty, secondly, because probation granted under these conditions would give better results, and, lastly, as I have already stated, because such a course would provide a solution of the conflict between the system of probation and the principles governing criminal procedure in many European countries.

In conclusion, I should like to state that in essence the system of probation as practised in the United Kingdom and the United States of America is not entirely foreign to the juridical traditions or incompatible with the present-day possibilities of development of Continental legal systems. Since by its nature the institution is entirely lacking in doctrinaire rigidity, it could well become the meeting ground of all those who realize that laws exist not for the purpose of expressing dogmatic abstractions, but have as their essential aim the protection and welfare of the individual and of society.

PROBATION IN RELATION TO EUROPEAN PENAL SYSTEMS AND MODES OF CRIMINAL PROCEDURE

by Marc Ancel [1]

The aim of this paper is not to determine the precise place which the European legal systems assign to probation, or to study the technical differences between, or the relative scope of, the Continental system of "sursis" and of the probation system: these questions form the subject of two other papers. The sole object - one which seems indispensable in a European Seminar on Probation - is to measure the reactions of the Continental systems of law and criminal procedure to the institution - definitely not Continental - of probation. In order to understand properly this particular aspect of the problem it is necessary to examine in turn:

(a) the general position of the Continental systems (and the way that position has evolved) in relation to probation;

(b) the difficulties which the existence, the adoption, or the development of probation raises in the Continental systems from the point of view of criminal law and procedure;

(c) the means by which it seems possible to solve these problems within the framework of the Continental systems at present in force.

I

The Continental legal systems were faced with the problem of probation at the end of the nineteenth century for two main reasons, or, if one prefers, as the result of a double movement:

(a) a legislative movement (particularly important for Continental countries with their written and codified law): following the State of Massachusetts Statute of 1878 a whole series of new statutes gave recognition to the probation system with a contagious effect comparable to that of those laws which, during the same period, and by a similar geographical development, brought about the establishment of special jurisdictions for juvenile delinquents;

(b) a doctrinal or scientific movement, for this was precisely the period of the criminological controversies which gave birth to new penal conceptions on the Continent; both the neo-classical school,

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supporters of a far-reaching individualization of penalties, and the champions of the positivist or anthropological schools, opponents of the ideas of moral responsibility and retribution, could evoke the aid of the institution of probation.

This institution, however, has not spread on the Continent as the parallel institution of juvenile courts was destined to do. There are three main reasons for this:

(a) the introduction and development of the conditional sentence ("sursis" or suspension of the execution of a sentence) already satisfies the need for individualizing and relaxing penalties and impedes the adoption of the probation system on the Continent.

(b) the "sursis" seems moreover to be more in harmony with the general principles of the Continental systems of law and procedure, which are legalistic systems into which the non-juridical institution of probation fits badly, and

(c) probation arouses fears (sometimes more obscurely felt than clearly expressed) because it seems an innovation which conflicts with the ideas on which the neo-classical systems of the Continent are based; it appears to run counter to the retributive character and the deterrent force of punishment and bases itself not on the offence committed, but on the personality of the offender, and on his capacity to reform.

However, dating from the years following the first World War, there has been a reawakening of interest in the probation system on the Continent. Several factors have contributed to this:

(a) first, a kind of internal disintegration of the idea of punishment, the general opposition to short sentences of imprisonment and a wider movement of ideas which throws doubt on the effectiveness of penalties (at least in their old form) which deprive the offender of his freedom;

(b) the inadequacy of the "sursis" when applied alone and the idea, becoming more and more widespread, that it is desirable to place under supervision or guidance the offender who has been conditionally sentenced as well as the offender conditionally released from confinement;

(c) the experience of the jurisdictions for young offenders, where, in the first place, a system of supervision in the open ("liberté surveillée") has evolved and developed without difficulty and, where, secondly, the juvenile court magistrate discards quite naturally his traditional role of a repressive judge, whose sole function is to hand out punishments objectively laid down by the law, and

(d) the notion developed by the modern schools of social defence ("défense sociale"), of a justice whose object is prevention and protection

and which applies to an offender the measure which is most likely, taking into account his character, to ensure his rehabilitation; probation is, in many respects, the prototype of this individualized measure of social defence.

Thus, Continental systems (or at least Continental criminologists) are inclined to turn with renewed interest towards probation. It is, however, at this point that the technical difficulties relating to the rules of criminal law and procedure which are peculiar to the Continental legal systems reappear in all their force.

II

A. The difficulties of criminal law which probation raises in the Continental systems are numerous. We can, however, confine ourselves to the most serious which relate either to the definition or classification of the institution, or, to the place which it is desirable to assign to it in the penal system in force.

(a) The juridical definition of probation has always appeared difficult to Continental criminologists; and the recourse which England had to the device of the recognizance before 1948 contributed not a little to the distrust in Continental countries. The "sursis", on the other hand, satisfies the juristic mind: it consists of a conditional sentence and normally the civil law theory of the condition, practically in the form in which it was fixed by Roman law, is applied almost in its entirety. Naturally enough probation cannot be fitted into the traditional legal framework in this manner; and the definitions which Anglo-American writers give to it are more sociological (or criminological) than juridical in character. Further, the fact that probation normally takes the form of a suspension, not of the execution of the sentence, but of its pronouncement, seems contrary to the general principles of systems of strict law, where a judicial finding of guilt is automatically followed by the imposition of the sanction provided by the law.

(b) The same difficulties exist when it is a question of classifying probation among the institutions of the penal law; they already existed when it was necessary to introduce the system of supervision in the open ("liberté surveillée"). In the end the latter came to be regarded as a "special measure of training for juveniles"; but this measure was part of a penal system which differed from the normal system applicable to adults. The main problem for Continental countries to-day is to apply probation to adults, and the idea, which is becoming more and more widespread, of extending the penal treatment of juveniles to adult offenders gives rise to many objections on the part of the strict jurists.

B. The difficulties arising from the criminal law alone have mainly interested the theorists; the difficulties of procedure have aroused the objections - and sometimes the distrust - of the practitioners. We can confine ourselves in this connexion to the following three main sources of difficulty:

(a) Probation presupposes a knowledge of the offender's personality and a reasoned (and individualized) choice of the treatment. Here we again find the problems met with during the Brussels Seminar regarding the introduction into criminal proceedings of the scientific examination of offenders. It is moreover of the essence of probation that the measure is applied before a final sentence is pronounced: should the ordinary judge accordingly be granted a power similar to that which enables the juvenile court judge to pronounce an "interlocutory" sentence of supervision in the open (liberté surveillée)? Is it necessary to go still further and to contemplate a suspension of the pronouncement of sentence or the division of criminal proceedings into two phases? If so, when and how will the normal appeal machinery operate?

(b) In the case of probation the judge no longer contents himself with making a final judgment which ends the proceedings and puts the matter outside his jurisdiction: on the contrary, there must be provision for bringing the case back before him and for amending where necessary the measure already adopted, without this further appearance necessarily being dependent on the commission of an offence punishable at law and at the same time without the process of review being an automatic one. Here the juridical analysis which held good in the case of the "sursis" is not applicable; the procedure strikes at the authority of the court's decision, the principles governing the jurisdiction of the judge, and the judicial function itself, if it is accepted that the judge can impose on an offender particular conditions relating to his mode of life or work, and above all, if it is accepted that the offender must give his consent to the order of the court.

(c) Finally, probation entails the organization of an effective system of supervision or guidance and consequently qualified technical personnel (quickly going beyond the stage where voluntary workers are sufficient) and proper services attached to the court. The recruitment of this personnel, the regulation of its functions and its relationship to the Bench, all raise new problems which are quite alien to the traditional judicial organization and the traditional conception of criminal justice: the judge is here being asked to perform a function which is primarily a social one.

III

The technical difficulties raised by probation explain the resistence - or reserve - of the Continental systems in the face of the new institution. This Continental reaction has manifested itself in several ways:

(a) A reaction of opposition (noticeable particularly in the first quarter of the twentieth century): there is a tendency to reject probation as a foreign importation which cannot be assimilated into the judicial system.

(b) A reaction of substitution: the adoption of probation is declared to be useless because the same aims can be achieved by other technical means: for example, the principle is employed of allowing the Public Ministry (Ministère Public or Parquet) not to prosecute an offender who agrees to submit to supervision; or again the "Parquet" which is responsible for ensuring the carrying out of a prison sentence will abstain from doing so if the convicted person agrees to a similar arrangement; or the prison administration will place the convicted person under what is, in fact, supervision in the open ("liberté surveillée"). These devices which, in general, prepare the way for legislative reform, nevertheless raise serious objections in systems based on a written code of law.

(c) A reaction of restricted acceptance: the normal system remains based on the ordinary method of sentence or on the conditional sentence, but use is made in certain cases of a system approximating to probation, for example in the case of juveniles.

But "liberté surveillée", which is an example of this restricted acceptance, has shown that it is capable of being widely extended by legislation, and, at the same time, the system of conditional release tends more and more to have added to it a system of after-care guidance. In Europe, at least, parole and probation tend to a large extent to meet and to complete each other. Moreover, a relatively simple legislative process enables many Continental judicial systems to take a decisive step towards a probation system: as the conditonal sentence exists practically everywhere all that is necessary is to match it with the appropriate measure of supervision. It is in this way that probation has in practice, been introduced into several European systems, successive laws adapting the "sursis" and gradually extending the cases where a regime of supervision and guidance can be imposed. Presumably this method will in future achieve still further success in Continental legislation.

Its main advantage, from the point of view of the technique of these legislations, lies in the fact that it avoids some of the difficulties raised by the probation system in its normal form: there is no longer any question of a suspension of the pronouncement of sentence, nor of radically altering the judicial powers of the judge or the machinery of appeal which function in the normal manner. On the other hand, the practice of making social enquiries, the observation of offenders and the active help of the social services in the work of criminal justice, are beginning to be accepted on the Continent. Much of the former resistance may, therefore, disappear, and that all the more easily because the new laws seem merely to detach from the probation system the idea of supervision and guidance in order to insert it in the system, accepted by everybody, of the suspended sentence ("sursis").

Will Continental law stop at this sort of half-measure? A Scandinavian legislator has not hesitated to introduce the device of a suspension in the pronouncement of sentence and elsewhere discussion ranges round the question whether, in introducing probation for adults, some provision should not be made for dividing the criminal proceedings into two phases. Finally, the use of

voluntary social workers is being given up practically everywhere. The admission, timid at first, of probation into the criminal law of the Continent may thus contain the germ of later reforms which will tend to transform the old Continental criminal procedure into a modern procedure of social defence ("défense sociale"). It is clear, moreover, that the technical difficulties, indisputable though they are, cease to be insurmountable as soon as the idea is accepted of a necessary evolution of penal institutions and, above all, as soon as one contemplates them in a new spirit.

SUPPLEMENTARY OBSERVATIONS

It appeared from the discussions in plenary session at the London Seminar that the introduction of probation for adults into certain penal systems at present in force on the Continent, might give rise to some objections and even some apprehensions. But it equally appeared that these difficulties were not the same for all systems and that, in particular, they appeared more serious in the Latin or Dutch systems. The discussion on this point consequently revealed the importance and usefulness of comparative research.

It also appeared that the objections which had long been made on the Continent had now lost much of their former strength. Many Continental jurists who were attached to the neo-classical systems (founded on the principle of moral responsibility and the deterrent value of punishment) now seemed inclined to agree that there was no incompatibility between probation and "repressive" law.

Probation had, moreover, the advantage, from the juridical point of view, of being in line with the general movement towards individualization. The development of modern prison methods towards individualization of treatment also favoured the introduction and spread of probation in systems which had hitherto been content with the simple "sursis". Thus, difficulties of a juridical character tended to grow less and attention was directed more readily to the practical difficulties arising from the need to organize probation services as effectively as possible.

In any case it seemed to be generally accepted that, above all, probation implied a new spirit and attitude towards the problem of crime and punishment in general. The discussions clearly showed that the adoption of this new spirit was from many points of view more important than the borrowing of this or that rule or technical device from the probation system. Some of those present seemed disposed to sweep aside altogether the difficulties raised by the legal experts. But it should not be forgotten that far-reaching reforms which sought to improve a juridical system, even on a point of detail, could achieve their full effect only in so far as they were properly integrated into the system itself. As the prison reform movement had already proved in an allied sphere, it was just as important, in order to achieve successful results in practice, to work from within, with the help and co-operation of the technicians, as to count on the diffused effect resulting from the influencing of public opinion by an ideal.

CONDITIONAL SUSPENSION OF PUNISHMENT (INCLUDING SURSIS) AND PROBATIONARY SUPERVISION

by Stephan Hurwitz 1/

I. LEGAL EXPEDIENTS FOR THE CONDITIONAL SUSPENSION OF PUNISHMENT

In the classic doctrine of penal law there was no room for suspension, on consideration of individual circumstances, of a punishment merited by the offence. If, in a particular case, the application of the legal penalty seemed unreasonably severe, the resort had to be to pardon. By this means the principle of just retribution as the judge's lodestar was not violated: it was fully reflected in the sentence of the court.

It is otherwise in legal systems informed by the concept that punishment is used and justified first and foremost as a means of protecting social values. This idea gives scope for variations of criminal policy, including the suspension of punishment or its substitution by other measures, so as to provide the rational solution for the particular case. The decision as to what is rational depends on several factors, not only that summarized as "protection of society against criminals", but also those which have regard to the best interests of the accused. The prevention of crime is not simply a matter of society's fight against offenders. Society has a share of responsibility for crimes, and criminals are themselves a part of society.

Conditional suspension of criminal proceedings

If punishment is judged to be unnecessary, the radical expedient is simply to abandon prosecution. Recent doctrine and law, e.g., in Scandinavian countries, are in favour of giving the public prosecutor a wider discretion in this respect. The principle of "absolute prosecution" (the German "Legalitätsprinzip") is superseded by a principle of "relative prosecution" ("Opportunitätsprinzip"); power to abstain from prosecution is still, as a rule, restricted within certain legal limits, and normally confined to cases against juveniles and mentally defective persons and to offences of a trivial or less serious character.

In prosecution systems of this kind there is a natural inclination to introduce some intermediate measures between prosecution and simple abstention from prosecution. Often it is advisable to attach some conditions to the abstention, particularly that the accused person does not commit other crimes within a certain time, that he pays some compensation or a fine, consents to abstain from alcohol, and the like. To these may be added prescriptions of supervision, educative measures, etc. Thus in the form of abstention from prosecution, a kind of conditional suspension of punishment emerges.

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This sort of conditional suspension of punishment is the mildest form of positive reaction by society against an offender. It gives him the obvious advantage of not being brought before the court with the risk of publicity, and he avoids the stigma of conviction by a court. On the other hand, the arrangement has disadvantages which necessitate its use being closely restricted. First of all, it is unsatisfactory that an accused person who finds himself in a difficult situation should be placed, without judicial control, in the position of either facing a penal prosecution or of agreeing to conditions of a possibly burdensome character. This situation can be avoided by providing for judicial control so that imposition of conditions, or at least of conditions of a more important kind, requires the approval of the judge. In this way the advantages attaching to a decision out of court may, however, be lost. Fundamental considerations, too, raise doubts about the wisdom of a far-reaching use of the waiving of prosecution in connexion with a system of out-of-court sanctions. But such considerations as to the dogmatically correct division of function between law courts and the organs of public prosecution, or any other theoretical objection, should not be allowed to prevent a cautious application of such a system as has been mentioned in those cases where there is no room for doubt as to the accused person's guilt, and where there are clearly both practical and humane reasons for the use of the conditional suspension of punishment of the type described.

Vide concerning the conditional suspension of criminal prosecution United Nations, Probation and Related Measures (New York 1951) pp. 190-92; Marc Ancel, L'institution de la mise a l'épreuve, Extrait de la Revue Internationale de Droit Comparé (Agen 1950) p.4, pp. 14-17.

In Danish law the waiving of prosecution combined with certain conditions has been broadly adopted; see the Administration of Justice Act ("Retsplejeloven"), 1916, art. 723, sect. 3: "If an accused person has admitted his guilt frankly in court, and the admission is confirmed by other circumstances, the waiving of prosecution may be made dependent of the condition that the accused person agrees, in court, to pay a fine approved by the court, that he pays compensation, and that during a certain period, of not more than five years, he abstains from committing another offence; to these conditions may be added that he should submit to a certain supervision or treatment or that he abstains from drinking or purchasing alcoholic drinks. If the conditions are not observed, the case against him will be revived if so decided by the authority that waived the prosecution."

When probationary supervision is attached to the non-judicial suspension of punishment, the measure is sometimes named "unofficial probation". Such probation in some States of USA is instituted by the probation officer without the intervention of public prosecution or court; vide Attorney General's Survey of Release Procedure, Vol. II, Probation (Washington, D.C.), 1939; Thorsten Sellin, Yearbook of Northern Associations of Criminologists (Stockholm, 1939), pp. 270 et seq.

Conditional suspension of punishment by judicial decision, but prior to conviction

Closely related to the method last mentioned is the suspension of punishment pursuant to a court's decision, without formal conviction. Provisions of this

kind, found particularly in English and American probation systems, normally require the facts of the offence and the guilt of the accused person to be established, but in a few States of USA an accused person can, under certain conditions, be released on probation without prior establishment of his guilt, when he consents to this.

In legal systems permitting extensive suspension of criminal proceedings by the means already described, there is no need for this kind of suspension of punishment by the court: this latter system is a typical outcome of the particular procedural systems of Anglo-Saxon law.

Where the abandonment of prosecution plays a less important role, there is obviously a greater need for the suspension of punishment by decision of the court and without conviction. But there are weighty reasons against the imposition of positive measures on adult offenders without the establishment of guilt, 2/ and it seems artificial and not without risk to maintain a distinction between "establishment of guilt" and "conviction", since the latter is merely the formal assertion of guilt. So it is logical that the English Criminal Justice Act, 1948, establishes formal conviction as a prerequisite to a probation order in all courts (save that, in the case of persons under the age of seventeen, the term "finding of guilt", instead of "conviction", is used by virtue of a provision in the English Children and Young Persons Act, 1933).

Vide for more detail Probation and Related Measures, pp.19-92. With regard to the treatment of young offenders, however, there may be need of measures which are imposed without formal establishment of criminal guilt, vide re the French ordonnance of 7 February 1942, Marc Ancel, op. cit., p.5.

Conditional suspension, after conviction, of the imposition of sentence, or of the execution of sentence

The most important forms of the suspension of punishment are those that leave the decision about suspension to the court after it has determined the guilt of the offender.

Here we meet the well-known difference between systems which leave the court to make such a decision without pronouncing the suspended penalty, and systems providing for the suspension of a sentence which specifies the penalty. Historically, the former system has developed from court procedures in England and the United States of America, the latter system in Continental law following the French-Belgian model. When these systems are considered side by side in comparative law, the essential difference is seen to lie not only in the timing of the suspension. There is an even more significant difference in the very nature of the measure. From the first the English and American systems combined the suspension of punishment with positive provisions, more especially planned supervision. The Continental system, on the other hand, confined itself to a negative measure, the non-execution of the penalty.

2/ See Marc Ancel, op. cit., pp.16-17. - The question was discussed at the Congress of Comparative Law in London in 1950. It was agreed there that probation should not be applied before the offender's guilt was judicially determined.

The penalty fixed in the sentence was judged to be a sufficient deterrent against continued criminality. This difference has become the decisive point in the distinction in the actual terminology between "probation" and (French) "sursis". The name and concept of probation is reserved for cases in which suspension is combined with personal supervision and guidance3/ whereas "sursis" in its pure form means suspension without positive supervision or care.4/

In spite of these typical differences, there is not in fact an absolute contrast between the measures adopted in English and American law and practice and those of the Continent. In England and the United States of America, side by side with proper probation, are found forms of the suspension of punishment very similar to the form generally used in Continental countries. Conversely these countries have for a long time combined suspension of execution of sentence with supervisory measures. More recently in Continental law instances occur of real probation without the preliminary fixing of the suspended penalty.

Suspension with supervision and without will be discussed later. Here consideration will be given to the expediency of fixing the penalty either at the time of the suspension or when first the offender fails to observe the conditions of suspension. Those who maintain that the penalty should be pronounced when punishment is suspended, stress the importance of public opinion. The general sense of justice, it is claimed, has to be satisfied through meting out a penalty for a crime publicly established. They fear that the morale-stabilizing effect of the penal system will be weakened if it becomes usual to abstain from social evaluation of the criminal act as expressed in the pronouncement of a penalty. The directly preventive force of the penal law - the "prevention generale" - will also be impaired, if the legal threat of punishment is not followed by the fixing of a penalty as soon as possible after the offence. The fixing of the penalty in advance is further thought to have a preventive effect - as a "prevention speciale" - on the offender himself. It warns him forcefully of the consequence of further misbehaviour. He cannot hope for that more lenient estimation of his crime which often can be relied on when the meting out of punishment does not take place until some considerable time after the crime was committed.

As a whole, not much importance can be attached to these considerations. They are, to some extent, rationalizations of traditional opinion. It is a mere postulate that the English and American system has a less "general-preventive" effect than the Continental one. As to the psychological effect in relation to the individual offender, it is impossible to say whether a penalty determined in advance will be a stronger deterrent than the prospect of punishment the kind and extent of which is unknown. It cannot be denied that the uncertainty of a threat of pending punishment may, according to the circumstances, be of a greater pedagogical value than the prospect of a specific penalty of a not too severe type.

3/ In recent theory there is a tendency to limit the notion of probation further, and to use the term only where there is a full personal investigation.

4/ See on "le sursis a l'execution des peines" - according to the French law of 26 March 1891 ("loi Bérenger") - H. Donnedieu de Vabres, Traite de Droit criminel et de législation pénale comparée, 3rd. ed. (Paris, 1947), p.518.

Instead of indulging in general discussion leading to useless abstractions it is desirable to emphasize the distinction between the suspension of punishment combined with positive measures of a probationary character, and the type of suspension of punishment which is the main, or the only decisive, factor in the court's decision.

The first group presupposes a special need of treatment, different from that which imprisonment can provide. This treatment involves pedagogical, therapeutical or social care, and is particularly indicated in the case of young or mentally diverging offenders. Here obvious reasons call for the postponement of the fixing of a penalty until it has been shown that rehabilitation cannot be achieved by the non-punitive measures which are resorted to as likely to be more effective than punishment. If, later on, another method proves necessary it will be determined on the basis of experience gained during the probation treatment. It would be unreasonable if that experience, giving as it should a deeper knowledge of the offender's personality and of his future possibilities, were not used when a prison sentence was substituted for the probation order. The crime that led to probation is now, after this further failure, of secondary importance. The circumstances as they now appear must determine the further treatment. But should a complete disengagement from the crime originally committed be aimed at? The important thing is not so much to ensure full punishment. As a rule, the probationary measures have involved sufficient reaction to satisfy general preventive demands. What matters is that excessive punishment, out of proportion to the criminality displayed, is legally inadmissible. The problem, however, may be solved by a reasonable system of punishment for counteracting or obstructing the conditions and prescriptions of the probation order. Perhaps this is the way that should be followed in future. The idea of a punishment equated to the crime committed must be abandoned in all cases where the offender was in the first instance put on probation.

It is different when the conditional suspension of punishment takes place without probationary supervision. No substitute for punishment is then prescribed. This in itself makes it the more desirable that the penalty, as the only positive consequence of the legal proceedings, should be pronounced. Add to this that here there is little chance of getting during the period of suspension that deeper knowledge of the offender's personality which might be helpful in determining the penalty. The offender in this case will be a person who is not apparently in any particular need of treatment. Otherwise probationary measures ought to have been used. Consequently, from the point of view of individual prevention, no essential advantage can be gained through the postponement of sentence: the punishment must depend primarily on the character of the crime committed. So it will be most expedient to fix the penalty at the time of the finding of guilt, whenever the technical advantages of this procedure are not outweighed by important counter-indications.

As a conclusion the considerations above may be summarized as follows: The adoption is recommended of a dual system of suspension of punishment according to judicial decision, partly (a) without specifying a penalty, partly (b) with simultaneous determination of the penalty deserved. The first method is to be employed where probation is ordered, the second one in other cases.

In Sweden a dual system has been adopted by a law of 22 June 1939 leaving to the court the choice between postponement of determination of the penalty incurred and postponement only of the execution of a penalty fixed in the sentence. The law gives no indications for the use in particular cases of one or the other method. The Danish Royal Commission for the Reform of Penal Law in preparing a bill on conditional punishment has, on the other hand, recently agreed to a system in conformity with the conclusion above.

Parole and conditional pardon

Another form of conditional suspension of punishment is parole. By this term is meant conditional release from prison after part of a sentence has been served. The measure has a resemblance to probation, in that it involves supervision and the positive guidance and assistance which, in recent criminal policy, is considered an essential part of parole. The resemblance becomes still greater if there is introduced a modified form of probation on release from a short-term imprisonment or after similar deprivation of liberty, either with a punitive aim or in order to facilitate a more thoroughgoing investigation of the offender's physical and mental condition. Such a combination of probation and imprisonment must, however, as a rule be considered undesirable, apart perhaps from cases where the offender has committed various crimes some of which, but not all, indicate probation in its ordinary form as the appropriate measure.

The special problems relating to the appropriate form of parole as part of institutional treatment are not relevant to this paper.

The same holds good in regard to conditional pardon. Like parole, this measure is applied after sentence and, as a rule, after the prison sentence has been partially served. But it differs from parole in not being bound by definite legal conditions, particularly as regards the length of sentence that must be served before release can take place. It must, as its name implies, be regarded more as a kind of leniency or "let-off" than as a positive link in the penitentiary treatment. The dividing line between parole and conditional pardon is, however, not sharply drawn. In German law for instance, conditional pardon developed into a legally organized system of conditional postponement of execution of sentence ("bedingte Strafaussetzung") depending on administrative decision after sentence.

See Adolf Schönke, Strafgesetzbuch, Kommentar, 5th ed. (München and Berlin, 1951), p. 87 - The Swiss Penal Code, 1937 art. 41 has broken with the German-Austrian system in so far as the decision on "bedingte Strafaussetzung" has been transferred to the court, see Thormann and von Overbeck, Das Schweizerische Strafgesetzbuch. I (Zurich, 1940), p. 87 ff. ("bedingter Strafvollzug").

II. PROBATIONARY SUPERVISION NOT PRIMARILY ASSOCIATED WITH THE THREAT OF CONDITIONALLY SUSPENDED PUNISHMENT

The main characteristic of modern probation is the positive treatment established in connexion with the suspension of punishment. This characteristic also holds good in many cases where, in Continental law, the suspension takes place under the name and in the form of a "conditional sentence" ("bedingte Verurteilung", etc.). There is good reason for entirely removing such cases from the general pattern of the conditional sentence where supervision is only incidental to the suspension of punishment, and not the primary consideration. Probationary supervision ought to be an independent form of legal sanction, equal as a penalty to such institutional treatment as imprisonment.

This new conception gives a more adequate idea of the character and aim of probationary supervision and this is in itself an advantage.

Furthermore it emphasizes that the punitive purpose, as the dominant consideration, is ideologically superseded by the idea of positive, progressive treatment as the prime goal of social intervention.

In this lies a recognition that modern non-institutional welfare work, as part of the reaction-system of the criminal law, equals or surpasses imprisonment. This recognition may be of importance in obtaining necessary funds to provide for such supervision, and in organizing the service in a way that attracts qualified persons worthy of an official status in the treatment of offenders.

The emancipation of probation from the older conception of conditional sentences has also the advantage of counteracting the popular misunderstanding that probation is a kind of pardon or, at any rate, a special form of leniency - and possibly a dangerous one - towards the criminal. The fact alone that criminal statistics separate probation from conditional sentences without supervision may help to counteract ignorant criticism of recent criminal policy.

The conclusion to be drawn from these considerations is that a threat of punishment as an integral part of the offender's treatment ought to be limited to cases where no probationary supervision is necessary.

This does not preclude a probation order being changed, later on, into a penalty having some relation to the crime committed.

III. CONDITIONAL SUSPENSION OF PUNISHMENT WITHOUT PROBATIONARY SUPERVISION

There will sometimes be need for the conditional sentence without probationary supervision. Such decisions will be appropriate particularly for persons who have committed isolated offences which are too serious to be settled without criminal proceedings by the prosecuting authority, but where

really extenuating circumstances, the offender's age, mental condition, etc., suggest that probation is not called for.

As previously mentioned, the penalty to be incurred ought in such cases to be determined at the time of postponement of execution.

It seems appropriate to admit the possibility of combining conditional sentences of this type with particular conditions, less restrictive than probationary supervision, the general condition being, of course, that the offender does not make himself liable to punishment for a further offence during the period of suspension.

IV. CIVIL STATUS AND CRIMINAL RECORD

The problems concerning the loss of civil rights as a consequence of criminal acts can only find a rational solution when the idea is abandoned that persons having been found guilty of certain crimes must eo ipso be considered as, and treated as, socially inferior. The persistence of this attitude is, more than anything else, the obstacle in the way of the rehabilitation of offenders. It is this idea that leads to an offender being deprived for a prolonged period of many of the rights which belong, as a matter of course, to the ordinary citizen. It is not necessary, here, to dwell upon the noxious effects, psychological and economical, associated with such deprivation. It is sufficient to point out that, in principle, it is incompatible with the ideas leading to the individualization of criminal policy which stresses the possibilities of bringing the offender back as a normal member of society.

General loss of civil rights on account of moral unworthiness must be replaced by another system. It is possible to make provisions that protect society from any particular risk and still give fair treatment to ex-criminals.

Fundamentally, a rational system should recognize that committing a crime ought not, in se, to involve deprivation of rights other than those necessarily involved in serving the sentence or substitute measure. If, after serving the sentence, the person concerned has to suffer any reduction in civil status, this must be specifically motivated by special reasons. The nature of the offence and the information subsequently obtained should indicate whether there is an obvious risk of abuse of the right concerned. Whether that is so should, as a rule, only be questioned in regard to rights of a special character as, for instance, the right to exercise a profession requiring public authorization. No restrictions should be imposed on carrying on an ordinary trade or profession. The same holds good in regard to rights of such a general character that their loss would mean an unreasonable restriction on means of earning a living or brand the person as socially inferior.

If such a system were adopted, there would be no need of additional special provisions relating to probation or conditional sentence. If a person convicted of a crime wanted to follow a profession of the special character mentioned above, the question whether there was any particular risk of abuse might, in principle, be raised whatever the sentence - conditional or

unconditional punishment, probation, etc. The decision would always be taken in new judicial proceedings and this would ensure that too wide an interpretation was not put on the criteria for deprivation of rights.

The fundamental point of view explained above may, however, be modified. The indication or risk of abuse of a certain right or function will, of course, as a rule be slight, if the criminal conduct has been of a kind to be met only with a conditional punishment without probationary supervision. And it must be still slighter in cases where a period of suspension - with probationary supervision or without - has expired satisfactorily. So it will surely be justifiable as a general rule in cases like these - and especially in the last mentioned ones - to exclude any possibility of loss of civil rights.

Nor do special problems arise in the system here outlined over the offender's restoration to full civil status. If he has been deprived of a right for a certain period of time, it will be automatically regained at the expiration of the period. Before them - and the same holds good in cases where no period has been fixed - the offender should have right of access to the court for restoration, on the grounds that his conditions have changed so as to remove special risk of abuse.

A recent Danish law (18 June 1951), amending the Penal Code, 1930, art. 78 and 79, has adopted the system as to loss of civil rights outlined above, see Betaenkning angaende fortabelse af rettigheder som folge af straf, afgivet af Den permanent straffelovskommission (Report on the loss of civil rights as a consequence of punishment, submitted by the Permanent Commission of Penal Law)(Copenhagen, 1950). The law is referred to and commented on in my book Den danske Kriminalret (Copenhagen, 1952), pp.604 et seq.

The entry of all criminal cases in a general register, including probation and other kinds of conditionally suspended punishment, is practically indispensable. Furthermore, there are strong reasons for keeping the particulars in that register, or in some special register, even after final discharge. If, at a later stage, the person concerned commits further crimes, or is suspected of such, it may be of considerable interest to know his record. This information is not only relevant to police investigation, but also to the choice and form of the penitentiary or non-institutional treatment to be ordered. Also for a criminological investigation of the offender, giving a thoroughgoing analysis of his development and personality traits, full information about his earlier criminal career is required.

The register referred to must be accessible only to authorities dealing with the investigation of crimes and with the judicial, penitentiary, and probationary treatment of offenders. The controversial question as to the extent to which information about an accused person's criminal past should be made available to the court before conviction, cannot be dealt with here.

A problem which should be separated from the question of registration and expurgation from the register, is how far the authority having custody of the register should be allowed to issue certificates to private persons or public authorities, stating that a person has a criminal or a non-criminal record, and whether such certificates should include any reference to conditional sentences and probation.

As a general rule it must be maintained that persons who have successfully completed the period of probation or suspension of sentence are entitled to a "clean" certificate for private use, if certificates are to be issued at all. It is more questionable which rule should be adopted when certificates are demanded during the period of probation or suspension without probationary supervision. The problems touched on here can hardly be solved except in connexion with the more general problem whether penal certificates should be used at all in private relations, independently of whether the question concerns persons put on probation or persons conditionally or unconditionally punished. Too much importance has been attached in many countries to the use of such certificates. In the interest of rehabilitation they ought to be abolished, if necessary with strictly limited exceptions in those cases where information about criminal or non-criminal record must be recognized as being of quite particular importance. If this principle is adopted, there will be no need of special rules regarding probation and related measures.

Vide on the question in relation to "la mise à l'épreuve" in French and Belgian law, Cornil, Revue de droit international et de droit compare, 1950 (numero special), pp.222 et seq.; Marc Ancel, op. cit. pp.24-25. - According to art. 595 in the French Code d'instruction criminelle (as amended by the law of 6 August 1947) certificates based on the "casier judiciaire" comprise only punishments deprivative of liberty, not probationary measures applied to adolescent offenders ("la mise en liberté surveillée des mineurs").

METHODS OF ORGANIZING AND ADMINISTERING A PROBATION SERVICE: A CRITICAL REVIEW

by Max Grünhut 1/

The administration and organization of a probation service have their proper place between the legal foundation of probation in the law of the land, on the one hand, and the personal aspect of probation, the functions of the probation officer and the conditions and methods of his work, on the other. Administrative questions have sometimes been regarded as subordinate. Administration is not an end in itself, but it has the unspectacular, though by no means unimportant, aim of materializing the intention of the law in the reality of life, and of enabling men and women to achieve the best possible result in the pursuit of the prescribed purposes of the law. Of the manifold questions which probation involves, the modes of administration are the last to permit one ideal solution. No uniform pattern can be devised with the pretension that it is in itself superior to any other form of organization and universally applicable. The ways and means of administering and organizing a probation service depend not only on the law, but are also determined by administrative tradition, social conditions and the political climate. Even so, if the choice of possible solutions is limited, it is essential to study the different forms of organization and to assess their relative merits, i.e., their advantages and disadvantages with due regard to the legal, social and political setting in which the probation service operates.

The principal forms of administration and organization present themselves as alternatives at three different levels. These alternatives are:

1. Should probation be locally or centrally administered?
2. Should it be under administrative or judicial control?
3. Should it be a voluntary or a professional service or a combination of the two?

I

Probation originated in the local sphere. The first sporadic experiments in England, no less than the pioneer work in Massachusetts sprang from the initiative of a municipal or county court.2/ Even when probation became a subject of national legislation, it was the local authority or the local court

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1/ Reader in Criminology, University of Oxford.

2/ See H. E. Barnes and N. K. Teeters, New Horizons in Criminology (2nd ed. New York, 1951), pp.763 seq.

which was either enabled or required to appoint probation officers.[3] In the United States, the states which first developed an official probation system (New York, Pennsylvania, Illinois, California) have maintained the principle of local administration.[4] California, with ten million inhabitants, has fifty-nine different county probation departments, with a total of a thousand probation officers, of whom fewer than seven hundred are engaged in actual case work.[5] Rhode Island was the first state to inaugurate a state probation service in 1899. While it has been said in favour of local administration that it would best adapt the service to the particular needs of the locality, and build up links of mutual interest and understanding between the service and local public opinion, its weakness is in sporadic development and the lack of uniform standards.[6] As in many other public and social services, it seems easier to enforce and maintain higher standards by a state régime, but at the same time mere branches of a centralized department may remain a strange element in a local community. The extreme solutions of exclusive local responsibility or complete centralized state control are not, however, typical in Europe. Almost all countries have worked out a compromise. Since probation is a function of the administration of justice the first responsibility for the service and its standards must be in the hands of the state, but it must be organized in such a way that local interest and initiative can play their part. There are many variations in the application of this principle. Members of a centrally administered service may be assigned to local courts or judges to whom they are responsible in the day-by-day performance of their work, as the recently appointed délégués permanents in Belgium. A country which relies on the service of voluntary helpers will, by this very fact, be biased in the direction of decentralization, since the appeal to the forces of the local community is the essence of any voluntary system. In Norway, social enquiries and personal supervision are in the hands of local child welfare committees or welfare unions.[7] In Germany, in so far as welfare authorities

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3/ See Massachusetts Act, 1878, s.1 (mandatory for the Mayor of Boston); Illinois Juvenile Statute, 1899, s.6 (permissible for county courts); (United Kingdom) Probation of Offenders Act, 1907, s.3(1) (permissible for petty sessional divisions); Criminal Justice Act, 1925, s.2(1) (mandatory for every petty sessional division).

4/ See P. W. Tappan, Juvenile Delinquency (New York, 1949), p.314.

5/ See Probation Service in California 1948 - 1949, Report prepared for the Special Crime Study Commission, State of California (Sacramento, 1949).

6/ See R. H. Ferris in Yearbook of the National Probation and Parole Association, 1939, pp.218 et seq., quoted from Barnes and Teeters, op.cit., p.764.

7/ See United Nations Probation and Related Measures, (New York, 1951), pp.141 and 147.

and welfare organizations are responsible for juvenile court work, social workers in this service are those belonging to the Municipal Youth Welfare Board or are appointed by local or regional welfare organizations co-operating with locally recruited members of these voluntary bodies. In the Netherlands social workers assist and guide the voluntary supervisors; all children's officers are in the service of "Pro Juventute" while the rehabilitation officers for adults belong to the staff of one of at least six voluntary organizations[8] and are supplemented by recently appointed state rehabilitation officers. In the Netherlands it is, however, the responsibility of a Central Rehabilitation Board, appointed by the Minister of Justice, to ensure efficiency and the necessary degree of uniformity of standards. In Sweden and France the professional element in a mixed system of voluntary case work and professional guidance is under the direct control of the central administration. In Sweden the "protective consultants" are appointed by the Prison Administration and assigned to the thirteen districts of the country;[9] in France the Minister of Justice appoints the "délégués permanents" and assigns them to the individual juvenile court judges.[10] England, with its exclusively professional probation service, and Scotland with its mainly professional service, are unique in the way they combine central control with local responsibility. The traditional forms of administration in England are confined to two executive bodies, the central government in Whitehall and the local authority on the spot with no intermediate regional departments. Only for certain recently developed state functions, such as the administration of labour and national insurance, are there local branches of the central government. Probation officers are appointed and paid by the probation committees of the local justices in the one hundred and twenty-two probation areas of the country except in the Metropolitan magistrates' courts area of London where the Home Secretary exercises the functions of a probation committee. The Home Secretary regulates by statutory rules the constitution and duties of the probation committees and the conditions of service of probation officers; one-half of the cost of the probation service is refunded to the local authority by the central government. The English probation officer's appointment is subject to confirmation by the Home Secretary, but once it is confirmed he is responsible, outside the Metropolitan area, to his local committee. The Probation Division of the Home Office sends inspectors to review the work of the local services.

This brief survey suggests that local and central organization are not exclusive alternatives, but that it is rather a question of degree and emphasis. The actual solution depends on the country's preference as regards a voluntary or professional service. Voluntary efforts and services connected with social administration are associated with local responsibility, while a strengthening of the professional element tends towards stronger control by a central

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8/ See N. Muller, Rehabilitation Work in the Netherlands (The Hague, 1951) pp.10 and 14.

9/ See Probation and Related Measures, p.158.

10/ See Ceccaldi, "Le délégué permanent à la liberté surveillée", address given at the First Conference of French Délégués permanents, April, 1951.

government agency. In the course of the historical development of probation, sporadic local efforts have been more and more standardized by central control, and this process went hand-in-hand with higher qualifications, better training facilities and a more efficient and thorough service. Countries which are building up a probation service should therefore from the very beginning strengthen the hands of the central government to ensure appropriate standards of the service.

II

The question of the local or central administration of probation is closely connected with the question of control by the executive or the judiciary. While the former may operate either at the local or the central level, judicial control always means that the probation officer is directly responsible to the local judge. On the Continent of Europe, a strict separation of powers has been the proclaimed foundation of constitutional government and an independent judiciary. This doctrine seems to rule out the establishment of an executive branch of the judiciary. The adjudication of cases according to the law is the sole function of the court; the execution of this decision is left to the executive. It was a French and Prussian tradition that convict prisons should be administered by the Minister of the Interior. In more recent times and almost everywhere prisons have been under the Ministry of Justice. Even so, the administrative section of the machinery of justice differs in its structure and personnel from the hierarchy of independent courts of law.

The reluctance of Continental courts to undertake executive functions facilitated the development of court social services by welfare authorities. The German Juvenile Court Aid (Jugendgerichtshilfe) is a notable example. In Great Britain Childrens' Officers were introduced after forty years experience with juvenile courts and with a probation service rendered by officers appointed by the courts; the main function of the Children's Officer is, therefore, child care rather than the treatment of delinquents. In Germany, however, Youth Welfare Boards (Jugendamt) originated simultaneously with juvenile courts after the first world war. Social enquiries, court attendance and personal supervision were statutory functions of the Youth Welfare Boards, which they could perform in conjunction with, or delegate to, voluntary organizations.11/ Such a solution puts institutional and non-institutional treatment on the same basis; in both cases welfare authorities are responsible for the actual application of the treatment ordered by the court. At the same time, both institutional and non-institutional treatment, even under court orders, are administered together with a wide range of other educational measures, and are thus spared the unwelcome taint of something resembling a prison sentence.

11/ See Youth Welfare Act (Jugendwohlfahrtsgesetz), 1922, s. 3(5): Juvenile Court Act (Jugendgerichtsgesetz), 1923, ss. 7(3), 31(3); Juvenile Court Act (Jugendgerichtsgesetz), 1943, ss. 13 and 25. See also 8 Howard Journal (1952), 168.

As against these claims on behalf of the control of probation by the executive, the question must be asked whether the elimination of the judge's influence on the actual performance of probation proves expedient from the point of view of extending the use of probation as widely as possible, and, in particular, to adults. In many countries the idea of adult probation as a judicial disposition of a standing equal to that of imprisonment is new. Judges who are thus required in suitable cases to renounce their traditional repressive action cannot in fairness be expected to make full use of the new measure unless they have a direct influence on the selection of probation officers, and the way they perform their functions. In England, the historic cradle of constitutional government, the independence of the judiciary has been jealously guarded without insisting on every doctrinal consequence of a rigid separation of powers; it would be regarded as an undesirable influence of the executive on the judiciary if the probation officer, who submits to the court the results of his enquiries and makes suggestions as to appropriate treatment, were the agent of an administrative authority.12/

The recently created délégués permanents in France and Belgium are appointed by the Ministry of Justice, but assigned to a juvenile court judge to whom they are responsible. The délégué permanent, according to a French formula has a "double appurtenance"; as far as his status is concerned, he is an agent of the State; as far as function is concerned he is an auxiliary to the judge.13/ Likewise in Germany, as an experiment, probation officers have recently been appointed by an independent but state-subsidized agency and attached to six juvenile courts. The dependence on the court is even greater in some of the American States and in England, where probation officers outside the Metropolitan area are appointed and paid by the local justices. The difference of structure between the machinery of justice on the Continent and in England must, however, be taken into consideration. On the Continent the judge, even in a small country place, is a member of a single centralized state machinery of justice, while in England the local Magistrate, although appointed by the Crown, is, as a rule, an unpaid Justice of the Peace, and as such one of the dignitaries of the local community. A part of the probation officer's salary and expenses is paid from funds raised by local rates.

The question of the administrative or judicial control of probation must be seen in the light of present-day criminological orientation. The administration of criminal justice is no longer confined to just retribution according to the prescribed tariff of the law, but is responsible for the offender's "individual prevention", i.e., his future as a law-abiding citizen. This implies a new adjustment between judicial and administrative functions. On the one hand, the traditional fixed sentences of the court will frequently be replaced by a flexible frame to be filled by administrative discretion. On the other hand, the judge also has his share in the responsibility for the curative or preventive effect of some of his measures. The "supervising judge" in the present Italian law exerts judicial control of certain aspects of prison administration. In France judges act as chairmen of the official after-care committees and have

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12/ See Report of the Departmental Committee on the Social Services in the Courts of Summary Jurisdiction, 1936, Cmd.5122, para. 124.

13/ See Ceccaldi, op.cit., p.2.

recently been entrusted with certain judicial functions with regard to the execution of punishments. Such extension of the judge's responsibility beyond the mere adjudication of cases is particularly desirable in the field of probation which is not an enforced deprivation of liberty.

The recent penal reform in France has provided a social worker, an assistant social, for every prison.14/ An ideal organization of probation provides a social worker for every criminal court. English experience shows that additional spheres of social work develop as soon as there is a welfare officer at the disposal of the court. English probation officers undertake after-care work, the supervision of persons while they pay fines by instalments, social enquiries and reconciliation in matrimonial cases. When the French Ordinance of 2 February 1945 reconstituted juvenile courts in France, provision was made for the délégué permanent with the principal function of helping the judge with the recruitment of voluntary supervisors, but his functions soon became primarily educational as an "éducateur des éducateurs", and in some places he is now assuming further duties in connexion with the supervision of non-delinquents in moral or social danger. In the Netherlands too, the rehabilitation officers, assigned to the court from voluntary organizations or a state service, are trying to extend their work to the supervision of pre-delinquency cases, moral welfare work and experiments with new forms of preventive and rehabilitative work in groups.15/ The question of the judicial control of probation must be considered in the wider context of social defence. In a constructive system of crime prevention social case work has a legitimate place in courts of criminal jurisdiction.

III

The choice between voluntary or professional work in probation is not a matter of expediency, but a question of high principle. Probationary care and supervision began as personal human rescue work, and the initiative of early pioneers was often fortified by membership of a charitable organization. John Augustus was a member of the newly founded Washington Total Abstinence Society, and Rufus R. Cook and Miss L. P. Burnham who succeeded him with similar efforts, belonged to a Children's Aid Society.16/ In England too, charitable efforts preceded the statutory introduction of probation; in 1879, the Police Court Mission grew up out of the Church of England Temperance Society.17/ Today the universal trend from private charity to public social work is manifesting itself in two different forms of organization of probation. In England, the United States and Belgium probation is organized as a professional service, while the Netherlands, France, Sweden and Germany (as far as the work is being done under the auspices of the welfare authorities), and to some extent Scotland, have combined systems in which voluntary helpers undertake personal case work under the guidance and supervision of professional social workers.

14/ See Jeanne Hertevent, 8 Howard Journal (1952), 181; P.Amor, in Hugueney and others, Les grands systèmes pénitentiaires actuels (Paris, 1950); J. Pinatel, 2 Brit. J.Delinq. (1952) 196.

15/ See N. Muller, op.cit., p.19. As to rehabilitative group work see the same author, 1 Brit.J.Delinq. (1950) 85.

16/ See Tappan, op.cit., p.313.

17/ See Dora von Caemmerer, Probation (Munich, 1952), p.26.

The resort to voluntary forces in probation is a notable expression of society's responsibility for the social adjustment of its erring members. If probation really is treatment in the open, the adjustment of the offender in his natural environment, then it is for the people of his own community to help and advise him and to influence him in the many highly individual ways which are the essence of modern social case work. These people are always on the spot. For a voluntary helper the probationer is, or ought to be, the one other person outside the inner circle of his family and personal friends for whom he is responsible. The co-operation of new helpers must be sought continually, and this, it has been claimed, brings a freshness to the service which saves the professional officer from petrified routine.18/

The case for voluntary work in probation is forcefully put forward by religious organizations, especially in countries with a population which is mixed as to religious affiliation. Work among persons with a common religious background has deeper roots and is expected to appeal to the innermost layer of the human soul. Churches and church-inspired charitable agencies regard it as an obligation as well as a right to undertake the responsibility for any personal rehabilitation work among members of their community. There is, sometimes, behind this argument a growing distrust of the modern secular State.

For a true assessment of the merits of voluntary work in probation we need reliable evidence of what can be done, and what has actually been achieved, by a service which relies on voluntary laymen for the larger part of personal case work. Short of this, the discussion of that question requires at least an analysis of the principal functions of a probation officer. Judges and public prosecutors often express doubts as to whether work among offenders can successfully be undertaken by persons without special qualifications and training, and this explains their reluctance to make frequent use of the new measure. There are certainly men and women available who are capable and willing to deal with juvenile law-breakers, but it will be extremely difficult to recruit persons for the supervision of adult offenders. When the English Criminal Justice Act, 1948, like the previous Probation of Offenders Act, 1907, defines the probation officer's duties as "to supervise ... and to advise, assist and befriend" those under his care,19/ these admirable words express the key to which his work must be tuned rather than the whole complex extent of his functions. He must certainly adopt a personal approach to the probationer, but also know where and when reserve and detachment are advisable. He must plan with, not for, the probationer. He must be capable of an informed judgment on whether or not a change of environment should be encouraged or even procured. Speaking more generally, he has constantly to decide whether he must insist on the probationer's self-discipline in the face of unfavourable surroundings or else try to relieve the pressure of adverse circumstances. In addition he must keep his courage and faith even in the face of failure and disappointment. All this calls for conscious and rational action, and requires experience which can only be gained through a comparison of the life experience of numerous persons. Training and the example of experienced elder colleagues must help to develop these qualities and techniques.

18/ See N. Muller, op.cit., p.12.

19/ Criminal Justice Act, 1948, V. Schedule, clause 3(5).

Where professional and voluntary forces are combined in a joint service, there must be a rational division of labour between the two parts. In France and the Netherlands and in the work of German welfare authorities and organizations, social enquiries are in the hands of trained professional social workers, while the offender's personal care and supervision is the primary task of the voluntary agent. From the point of view of organization, something can be said for the separation of these two fundamental functions of the probation officer. In some of the large probation departments of the United States, different persons specialize as enquiry officers, court attendance officers, and supervising officers. The demand for pre-sentence reports occurs not only in those cases where the court is likely to resort to probation; it develops into a general feature of criminal proceedings. It seems logical that in France the assistant social makes the social enquiries and submits the pre-sentence report which, in accordance with the court's decision, will be forwarded either to the institution or to the délégué permanent. Practical experience in Great Britain, however, strengthens the case for combining enquiries, court attendance and supervision in one person. In practice, observation and treatment cannot be separated; treatment begins with the first meeting, and it can be much better planned on the basis of the probation officer's personal impressions than on the basis of a study of someone else's written report. The acceptance of this view would be an argument for a thoroughgoing professional service. Finally the trained social worker has an important mission vis-à-vis the court. By his social report, the recommendations he submits with regard to treatment, and his evidence based on his experience with former probationers who reappear before the court, he can constantly bring social considerations before the court and this does more than anything else to direct the administration of criminal justice towards individual prevention and social defence.

Even a thoroughgoing professional service does not altogether exclude the co-operation of volunteers. For some time before the war the Borstal Association enlisted the help of "personal friends" to supplement the after-care work of probation officers. In the United States prison authorities and probation departments try to encourage citizens to volunteer for "sponsorships" for individual ex-prisoners and probationers, although warnings are sometimes heard that this scheme should not be an expedient for the relief of overburdened probation officers.20/ Even a professional service does not work in self-contained isolation. The probation officer is a member of the community; he uses the resources of the community both voluntary and public, and by his influence helps to create that climate which is necessary if probation is to have a chance of succeeding.

The rise of probation as a professional social service is in the final analysis an outcome of the historic process of secularization. The first stage, characteristic of the eighteenth century, was the transition from religious care and alms-giving to secular philanthropy; the second, which we are witnessing in the twentieth century, is the transition from private charity to public service.

20/ See G.H. Shaw, 29 (Pennsylvania) Prison Journal (1949) 90; F.A. Ross, Federal Probation, Dec. 1951, p.6; J.V. Bennet, ibid., March 1949, 17.

In the last resort, a choice must be made between resisting this development, and accepting and welcoming it as a penetration into public life of attitudes and responsibilities which have their origin in the Christian tradition.

The relationship between voluntary efforts and professional work defies any uniform, rational solution. Even so, it is fair to say that a deeper insight into the possibilities and limitations of probation as social case work with the power of the law behind it and as a form of treatment, not only for juveniles but also for older minors and adults, leads to the demand for an extension and strengthening of the professional element.

Modes of penal and corrective treatment must be assessed with a view to their purpose rather than with a view to the economic aspect. From an administrative point of view the economic aspect should not, however, be neglected. As a mere illustration, American figures suggest that it costs $900 a year to keep a man in prison, but only $100 to supervise a probationer; if only five or six offenders are put on probation instead of being committed to prison, the salary for a trained probation officer will be saved.21/ In England and Wales, some 23,000 prisoners are housed in sixty-one penal establishments with a staff of 3,479 permanent and 791 temporary and auxiliary officers, while over 45,000 probationers are supervised by about 1,100 full-time and 100 part-time probation officers who also perform many other duties. The increasing costs of the maintenance and staffing of institutions and the rising standards of living which the social conscience demands for those committed to state institutions, makes institutional treatment highly expensive. In England the money needed to keep two boys for one year in a Borstal institution is sufficient to pay the salary for a full-time probation officer. But this question has even wider implications than budgetary considerations. If an offender suitable for probation were committed to prison he would probably serve a short or medium sentence in a local prison where the constant change of short-term prisoners of different descriptions is a severe obstacle to regular full-time productive work.22/ While he is on probation he goes on with his usual occupation and may even, under the probation officer's influence, improve his work habits or change to a more useful occupation. The study of 39 case histories of male probationers of 17 years and over, almost all of them guilty of stealing, 17 under aggravating circumstances, revealed relevant information in 31 cases. Fifteen of the men kept their jobs or were re-instated; four improved their working conditions; eight were dismissed, mostly in connexion with the offence, but found new jobs, frequently with the help of the probation officer; at the other end of the scale, four found their way to prisons and Borstals.

It is the aim of present-day penal reform to intensify the use of probation as a form of non-institutional treatment and to extend it everywhere to adult offenders. In many countries the law and the social services are moving in this direction. This implies, in the administrative field, an enforcement of uniform standards from above, a strengthening of judicial control on the spot, and a shifting from voluntary efforts to professional social work.

21/ See Barnes and Teeters, op.cit., pp. 761 and 763.

22/ See L. Fox, The English Prison and Borstal Systems (London, 1952), pp. 180 et seq.

THE PLACE OF THE MEDICO-PSYCHOLOGICAL AND SOCIAL EXAMINATION IN JUDICIAL PROCEEDINGS, WITH SPECIAL REFERENCE TO PROBATION

by Paul Cornil[1/]

1. Introduction

Last December the Brussels Seminar[2/] made a critical study of the methods employed in the scientific examination of delinquents and considered the problems raised by the use of these methods in criminal proceedings and in the treatment and rehabilitation of convicted persons.

The revision of penal treatment after sentence, in the light of scientific examinations, does not really raise any question of principle; more precisely, what is discussed in this context is the validity of the methods of examination and the nature of the techniques employed. The principle of the scientific examination itself is hardly questioned. It seems that from the moment when the sentence of the court has placed the delinquent in the charge of the prison administration, the latter is free to submit the offender to the examinations and enquiries which are judged to be necessary for his treatment.

This explains why the most complete and extensive systems of scientific examination were introduced at first by the prison administrations. It was possible to set up services of penal anthropology (Dr. Vervaeck, 1907 and 1920 Belgium) and of criminal biology (Dr. Viernstein, 1923 Bavaria) and to collect data for the purpose of the classification of offenders and of scientific research without stirring up protests or raising difficulties.

The situation is quite different when one seeks to introduce these examinations into the judicial proceedings. Various objections are raised; people point out the high cost of these examinations, the lack of specialized personnel and the confusion which these investigations might cause in carrying out the judicial enquiry. It is consequently advocated that these examinations should be limited to certain particularly serious cases (see the reports of Prof. Roland Grassberger and of Dr. Karl Schmidt to the Brussels Seminar).

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2/ United Nations European Seminar on the medico-psychological and social examination of offenders, Brussels, 3 - 15 December 1951. Technical papers and national reports submitted to the Seminar, as well as the conclusions adopted, were published in International Review of Criminal Policy, No. 3, January 1953, special issue entirely devoted to the Seminar.

The object of this paper is to take up the principal arguments used in the course of the Brussels Seminar, with particular reference to probation.

2. The scientific examination and guilt

A point of primary importance which must be re-affirmed from the outset is the clear separation which must be made between scientific police methods and the methods of examination and enquiry relating to the offender and his surroundings.

The scientific examination which we have in mind must be quite independent of the judicial enquiry. The purpose of the latter is to decide the guilt of the accused. It must achieve that aim by proper methods of investigation. The scientific examination cannot and must not interfere in this field.

However, and I insist on this point, the recourse to methods of scientific examination of the personality and surroundings of the accused pre-supposes that guilt has been established, as this alone justifies the use of such methods. It is necessary to stress this principle because, while criminal justice is turning more and more towards treatment and the protection of the community and departing from purely punitive sanctions, it is nonetheless true that educative or preventive measures would in no way be justified in the case of a person who has committed no offence. Training measures based on the potential danger of the pre-delinquent are already admissible in the case of the child who is in moral danger, but I should fear to take this course in the case of the adult who has shown no precise symptom of criminal conduct. Our knowledge with regard to the prediction of human behaviour is still inadequate. It is, moreover, to be feared that in times of disorder a similar method might be applied to persons who were considered politically dangerous and who nevertheless had not committed any precise act which might be brought up against them.

This danger is not an imaginary one even in normal times. It is not difficult to show that a judicial decision which was based solely on the examination of a person's personality and surroundings without taking into account his guilt or innocence might lead to serious abuse.

I have just re-read the fine Norwegian novel of Johan Bojer, "The Power of Untruth".3/ The author has probably not thought about the problem of the scientific examination of offenders but his gripping description of a judicial error is based on the almost unshakable strength of the accuser's blameless reputation, which convinces the judge and impels him to convict an innocent person whose reputation is bad. It is essential that a judge should not be induced by a social enquiry, the result of which is submitted to him before the declaration of guilt, to convict without decisive proof a person whose antecedents and manner of life reveal him as "capable" of having committed the act of which he is charged.

3/ Copenhagen 1903, French translation by Guy-Charles Cros, published by Nelson 1932

Accordingly, it seems to me to be dangerous to depart too radically from the classical principle "Nullum crimen sine lege" and to neglect the guilt of the offender by going so far as to write that in the contemporary practice of law "the system - one might almost say mystique - of guilt disintegrates".4/

Like this very distinguished colleague I note the modification in criminal procedure which obliges the judge to choose an effective measure and no longer a punishment based solely on the seriousness of the offence, but I would be afraid to go even further and abandon the judicial proof of a criminal act committed by the defendant as the only justification for the application of penal measures.

It is, moreover, a principle which is generally admitted in the different probation systems. In England, for example, even before the passing of the Criminal Justice Act of 1948, the judge had to establish guilt before deciding to place on probation, though in certain cases, it was not necessary, strictly speaking, to convict.5/

This is one of the reasons why the conclusions of the Brussels Seminar show a preference for the system of remand between the decision on the facts and the determination of the penalty. This preference is justified because it enables the study of the offender and his surroundings to be carried out only after the decision on the facts. In this manner the decision on the facts "is not in danger of being influenced by the results of the personal examination of the accused".6/

3. Aim and scope of the scientific examination

The first Section of the Brussels Seminar attempted to define in its conclusions the scope and the aim of the scientific examination of offenders. A reading of this definition shows that the introduction of scientific methods of investigation of the personality and background of the offender serves various needs, of which the principal are:-

the determination of the degree of responsibility of the offender;
the search for the motives of the offence;
the description of the personality of the accused and, on this basis, the determination of the treatment;
the planning and carrying out of social rehabilitation;
scientific research.

4/ See M.Ancel "Le procès pénal et l'examen scientifique des delinquants", Melun, 1952 p. 7

5/ See C.D. Rackham - "The Probation System", in Penal Reform in England - London Macmillan, 1946, pp. 118 and 127

6/ See Conclusions of the Brussels Seminar, Section II, Nos. 6, 7 and 8

It is noteworthy that, generally speaking, scientific examinations and social enquiries have been introduced into judicial procedure in connexion with two types of case:

(a) abnormal cases, that is to say, those in which there are grounds for assuming the existence of physical or mental abnormality;

(b) favourable cases, for example, those of young offenders capable of benefiting from training or of adult offenders who appear suitable to be placed on probation.

The examination of abnormal cases for the purpose of ascertaining the degree of criminal responsibility already existed in the classic period when criminal law was determined by the doctrine of retribution. According to this theory, only responsible persons can be subjected to penal sanctions. When there is any doubt about responsibility, a psychiatric examination must be held at the beginning of the legal proceedings in order to determine whether the accused is fit to be punished. A system of criminal justice organized on the basis of the principle of the protection of the community could, however, defer the mental examination until after the finding of guilt, since the sole aim of this examination would be to decide the nature of the preventive measure (mesure de défense sociale) appropriate to the offender's mental state.

The scientific examination of favourable cases should enable the judge to choose between several possible sentences, for example, between training and ordinary imprisonment; between a fine and prison; between probation and prison, etc. For this purpose it goes without saying that the examination must be held before the sentence is pronounced, and it is for this reason that the pre-sentence investigation has been introduced into judicial procedure at the same time as probation. It has been justly written that this preliminary enquiry was one of the important contributions of probation to the administration of justice.7/

4. The selection of probation cases

When in 1841 John Augustus asked the Boston court to suspend sentence and to entrust the accused to his supervision, he did not justify this proposal by any profound social investigation; his common sense and knowledge of men had persuaded him that he was in the presence of a "good case", a person capable of reforming himself without the need of prison treatment. But later, when probation became a legal institution, the preliminary enquiry became an indispensible part of the probation process.

7/ National Commission on Law Observance and Enforcement. Report on Penal Institutions, Probation and Parole, Washington, 1931, pp. 156/157 and Attorney General's Survey of Release Procedures, Volume II, p. 143, quoted in Probation and Related Measures, p. 231

The aim of this enquiry is twofold:-

(1) to decide whether the subject is suitable to be placed on probation, and

(2) if so, to determine the conditions which should be imposed.

With regard to the first of these aims, we find ourselves in a sort of vicious circle so long as the practice of holding a preliminary enquiry has not been made general. Indeed, the capacity of benefiting from probation cannot be deduced from the nature of the crime committed. Experience has shown that certain types of offenders, mental deficients, alcoholics or drug addicts, are mostly incapable of being treated by the method of probation. It has further become apparent that persistent offenders are worse risks than first offenders when they are put on probation. These are not, however, invariable rules and it is possible for one of these cases to be successfully treated by probation.8/

I am, on the other hand, well aware that probation is regarded as favourable treatment and that public opinion accepts with difficulty its application to those responsible for serious or sensational crimes. It is for this reason that a responsible American practitioner recently wrote that the judge should not only take into account the effect of the conviction on the offender himself, but that he ought also to see whether an example was necessary to deter others.9/

But apart from these exceptional cases, what is the criterion for deciding whether enquiries should be made with a view to probation? Sheldon Glueck thought that it should not be the nature of the crime, but rather the personality of the offender which should be taken into consideration, and he advised that for the purpose of laying down guiding rules, an experiment should be made by examining systematically all offenders over a specified period in such a way as to establish which types of case require a detailed enquiry.10/

If Prof. Glueck's advice were not followed, a preliminary enquiry was ordered only in cases which were presumed to be favourable (on the basis either of the offence committed, the antecedants of the accused or the impression he creates), it would be acting in an empirical manner without any scientific justification for the method of selection.

8/ See National Commission on Law Observance, Report on Penal Institutions, Probation and Parole, p. 155.

9/ See H. Chandler, "Latter-day procedures in the sentencing and treatment of offenders in the Federal courts", Federal Probation, March, 1952, p. 5.

10/ See Sheldon Glueck, Probation and Criminal Justice (New York; Macmillan, 1933), p. 15.

5. The nature of probation

The preliminary enquiry in the case of probation can be accounted for by the fact that probation is regarded as favourable treatment.

The offender is left at liberty instead of being put in prison. Before taking this risk it is necessary to know with whom one is dealing and to assure oneself that there is no risk to the community. I could not, however, support the contention that placing on probation is a conditional suspension of punishment.11/ This idea is based on a misunderstanding. In fact, probation is a penal measure designed to rehabilitate the offender. It differs from the older type of punishment in as much as the restrictions which it imposes on the activity of the subject are not selected for the purpose of making him suffer, but in order to ensure his reformation.12/

But this difference is affected by the general evolution in penal measures: there is a tendency for imprisonment itself to change into a course of training and to be no longer a simple punishment. One cannot, therefore, consider probation as a conditional suspension of punishment: it is a method of penal treatment, restrictive of liberty, which is tried in cases judged to be favourable. If it fails, recourse will be had to the deprivation of liberty, in the same way as imprisonment is inflicted on an offender who fails to pay a fine. It is for this reason that the results of the enquiry made prior to probation should be utilized at a stage of the procedure where, guilt being established, it is a matter of selecting the most satisfactory and effective method of penal treatment.

6. The determination of the conditions to be imposed

Besides its purpose of selection, the preliminary enquiry should give positive indications as to the method of treatment of the person put on probation.

As it is a matter of treatment in the open, influence is brought to bear on the offender by relying on persons close to him or on social organizations. Whilst the prisoner is subject to the educative activity of the prison staff, the probationer must be guided along the right path by the probation officer who must necessarily rely on the family and social circle. The enquiry made prior to placing on probation is, therefore, in origin above all a social enquiry. To this medical and psychological examinations of the offender have later been added. On the other hand, the scientific examination of a convicted person by the prison administration has concentrated from the beginning on the examination of the individual. The social enquiry was not added until later to these investigations.

11/ See Probation and Related Measures, p. 5.

12/ See Sutherland Principles of Criminology, 4th edition, p. 383, quoted in Probation and Related Measures, p. 186, note 6.

The second aspect of the preliminary enquiry, that of deciding the conditions to be imposed, will be deduced from the diagnosis of the factors contributing to the offence. Could this determination of treatment be left in practice to an executive body just as it is the prison administration which most often decides on treatment in prisons, without the intervention of the judicial power?

Here we touch on one of the aspects of a larger problem which is frequently discussed: the division of responsibility between the judicial power and the administration charged with implementing penalties. This delicate question is outside the scope of my subject. Whatever solution is adopted, it must be recognized that in most countries the task of the criminal court ends after the sentence has been pronounced. This principle has been departed from since the creation of juvenile courts by usually entrusting to the judge the task of supervising the execution of the measure on which he has decided. In the case of adult offenders, there is a certain tendency in the same direction. I cannot discuss here the value of, and the opportunity of carrying out, this supervision. I see no reason, however, for adopting a solution with regard to probation, which is different from those adopted for carrying out other forms of punishment. If the judge participates in the execution of punishments, he should in the same way participate in the carrying out of a probation order. If he restricts himself to pronouncing the sentence, the position ought to be the same when the offender is put on probation.

One may, however, ask whether the determination of the conditions imposed on the offender must not necessarily be a matter for the judge. It must be recognized that the choice of these conditions is a particularly delicate matter and may affect some essential rights of the individual.

It is perhaps paradoxical to say that the choice of prison treatment is a less delicate matter than the choice of measures which are simply restrictive of liberty like those which are imposed on the probationer. This statement is not, however, without foundation; while the prison regime is subject to certain controls to prevent abuses, the probationer might have imposed upon him conditions which are vexatious or which unnecessarily impinge upon the exercise of his civil and political rights, such as the ban on following a profession or the obligation to reside in a specified place, without these measures being indispensible for his rehabilitation. It is for this reason that it seems preferable to leave to the judicial power the duty of deciding these conditions, at least in their general lines. On the other hand, for carrying out this measure, it is advisable, in my opinion, to relieve the criminal courts of the obligation of intervening each time that a change occurs in the offender's situation. This justifies the creation of an administrative body responsible for this function, the courts intervening only in the case of an occurrence or failure which justifies the application of another penal measure.13/

13/ See Rackham in Penal Reform in England, p. 122, and Projet de loi belge établissant le régime de probation dans le système penal - Chambre des Représentants, 1947-1948, document No. 469.

7. Conclusion

Conclusions put forward by M. Jean Dupréel in delivering this lecture at the plenary session on 22 October 1952:

(1) Probation is a penal measure, restrictive of liberty, imposed upon an offender found guilty of a breach of the penal law.

(2) The personal scientific examination and the social enquiry can only be made, or at least their results can only be communicated to the court, after the establishment of guilt.

(3) The social, psychological, and medical examination should be prescribed in all cases of any gravity to enable the court to select the most appropriate penal measure - even if at first sight the use of probation seems unlikely.

(4) The scientific examination should be established in such a form as to permit a probation order to be made, where appropriate, by furnishing the information necessary:-

(a) to select the cases suitable for probation; and

(b) to determine the treatment to be imposed on the person placed on probation.

(5) As far as this treatment and its application is concerned, the following principles should be observed:-

(a) the determination of the conditions imposed upon the probationer should be made by the court; and

(b) the carrying out of this treatment should be a matter for an administrative body.

THE SCOPE FOR THE USE OF PROBATION

By Margery Fry 1/

Probation, like medicine, is midway between an art and a science. Neither diagnosis nor treatment can be entirely divorced from the personality of its practitioner. The case that will be suitable for this method in the hands of one man or woman would be foredoomed to failure under a different type of officer. Its application depends, first, on the decision of the court. In most cases the court will be strongly influenced in its conclusions by the advice of the probation officer, who should, in all serious cases, have had an opportunity of investigating the case before any decision is made. It is rarely wise for a court to insist on its use, where the probation officer is definitely unwilling to undertake it, though he may in spite of his having given fair warning to the court, be directed to take the case even in an instance where he is very doubtful of success. In English law, it is also necessary, except in the case of a child under the age of fourteen, for the offender to enter into the obligation of a probation order; if he refuses the court can only fall back on other ways of dealing with him. These triple conditions, each involving an evaluation of the circumstances from a different point of view, together with the essentially personal nature of the relationship between officer and probationer, obviously render it futile to search for exact rules as to the cases in which the method can be used; yet some general principles can be found underlying its employment which have ensured its wide acceptance in English-speaking countries. Its rapid spread is itself evidence that its basic philosophy is in harmony with the trend of thought in the last fifty years, and to some extent this agreement with generally received ideas will be a guide to the classes of case in which it may usually be employed. But it does not follow that it may not be a suitable method to employ in other instances.

In England, for example, it is only since 1922 that the crime of infanticide has been distinguished from that of murder; till then the death sentence, though not carried out, was pronounced. Until the public became educated to perceive the essentially pathological origin of infanticide, it would hardly have been wise to place on probation a mother guilty of it. In the year 1951 we find, however, that seven out of fourteen women found guilty of this offence were put under the care of a probation officer, while two were conditionally discharged.

But since the probationer remains, as a rule, unsegregated from the ordinary public, there are special difficulties in applying the method where it does not to some extent conform to popular ideas of justice.

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Thus, in a very interesting case in recent years, when a young girl had caused £20,000 worth of damage, and severe local unemployment by repeated acts of arson, a main difficulty about the use of probation lay in the hostility of the neighbourhood towards her. The very successful outcome of the case was made possible by conditions in her probation order which kept her almost entirely away from her home during the period of her probation. The public clamour for dramatic punishment in such a case, if it had been yielded to, might have turned a youthful neurotic into a continued danger.

In the matter of penal sanctions public opinion moves by slow steps with occasional sudden set-backs when primitive (but not therefore trustworthy) impulses of fear and revenge are called forth by the flagrancy or frequency of some particular offence. At the moment we in England are suffering from a still rising prevalence of crime, far above that of pre-war years. Some of its causes can be guessed at but a complete explanation is lacking. A certain antagonism to the more rational and progressive methods of penology is aroused, and a slight tendency to a more restricted use of probation has resulted. But such temporary set-backs are to be expected. It is by looking back over considerable periods of time that one realizes how deeply the spirit of probation which has permeated our dealings with young offenders is penetrating into our conception of the treatment of adults.

It is noteworthy that new methods are usually employed in the treatment of children and later tentatively extended to adults. The offences committed by children are not generally of a kind to call forth a severe desire for revenge or insistent demands for protection. The public can approach their treatment with calmness, even with some sympathy. The effect of his surroundings, the treatment he has received from society, and its influence on him is, moreover, far more evident in the case of a child, who obviously has little choice of his own milieu, than in that of an adult.

This leads to the first characteristic mode of modern thought to be emphasized - our consciousness of the individual as conditioned by society is far more acute than that of our forebears. To hang a mere child, as they could do with a clear conscience on the grounds of his criminality, would appear to us unjust, for the very reason that we should be conscious that society itself was in the main responsible for his misdemeanour. The provision, in the probation officer, of an embodiment of the paternal aspect of society, is, in such an instance, not merely a method of treating the offender, it is at the same time an act to appease the social conscience.

There is thus a special fitness when probation can be used not merely in controlling but in enhancing the lives of those who have never had a chance.

Take the case of a girl whose first two probation orders were made by the Juvenile Court, but whose treatment continued until she was 19 or 20. This girl lived with her father and brothers in a remote farm house on a bleak stretch of moors, with no other dwelling in sight. The house was dingy, dirty and gloomy and lacked all amenities. Ann was an illegitimate child. Her father had lived with her mother for several years until her death about two years before the charge. He was a violent tempered man, and Ann's terror of him

was pitiful. He would not allow her to go out to work or make friends through any leisure activities. He kept her very short of clothes, and her appearance was almost ludicrous for this reason; she was used as the drudge at home, to look after him and the boys.

Through fear of her father Ann lied very convincingly. She was an intelligent and capable girl, and she had aspirations, all of which were thwarted. She compensated herself for the emptiness of her life by romancing, and by a readiness to pick up any perquisites available. All efforts to persuade her father to allow her to lead a normal life failed.

Two probation orders for serious cases of stealing proved a failure, since no progress was made towards improving the home situation. At last the girl's frustration made her turn upon her father, and then she broke open a box at home in which he kept £150, and bought herself smart clothes, lipstick, jewellery and books - and some flowers for the probation officer! For this she was sent to an approved school, but, coming back to the same miserable home, where the father was not even working, she stole two shirts from the factory where she was employed. The patience of the court was not yet exhausted. She was placed on probation for twelve months with a requirement as to residence for six months at an approved hostel, where psychiatric treatment was given to her. Work was found for her in a distant town. She has since married a man who knows her past history and is at last able to live a full, normal life. She still corresponds regularly with her probation officer.

It is not always remembered how helpless the very poor are in coping with the complexities of modern life. A woman I know, some seven or eight years after her probation had ceased, had to go into hospital lately. In her difficulty in finding a temporary home for her child, it was the most natural thing in the world for her to apply to "my probation officer".

In reading the reports of probation officers one is constantly aware of the skill with which they employ all the resources of law and of charity in rehabilitating broken lives.

If we are conscious today of the large share of the blame for misconduct which may lie on the shoulders of society, the doctrine of the full and unique responsibility of the offender is further shaken by increasing knowledge of the mental and physical functioning of human beings. Wherever we find our standing place upon the slippery slope which leads to determinism, we can never regain the robust belief in an untrammelled freedom of will which could sanction the flogging of madmen, and even, in the Middle Ages, the legal execution of animals.

The nineteenth century saw the growth of a new attitude towards lunacy in the action of the community regarding the mentally deranged person who is a danger to others, we see the typical case of a self-protection which is not combined with any idea of revenge, deterrence, or the maintenance of the moral law. The twentieth century has gone further; the second mode of modern thought to be emphasized is the appreciation of the many intermediate grades between complete mental equilibrium and the derangement of outright insanity.

Probation, whilst it is a recognition of the offence against society and a certain limitation on the freedom of the offender, can yet not be described as punitive; it is, therefore, particularly in accord with the demands of the public conscience (for such a thing does exist!) in cases where mental instability has not reached a dangerous degree, though the sense of responsibility is impaired.

In Britain, at any rate, the law maintains - in the face of the extreme difficulties of further definition - a delusory simplicity with regard to shades of responsibility. The public is increasingly aware of the discrepancy between the legal classification of people into sane and insane and the actual elusive facts. Public opinion is, therefore, willing to accept the practical way of dealing with some of these cases, by a combination of probation with medical treatment, which is afforded by the Criminal Justice Act of 1948.

In terms of the Act, where the offender is not certifiable as a lunatic or as a mental defective, the court if it finds that on account of his mental condition he "requires and may be susceptible to" treatment, may make the undergoing of such treatment a requirement of the order. This provision has a double merit: in many cases recovery from a mental trouble is far more likely if the offender is not sent to prison, and there are instances where it is little short of cruel to send a hitherto respectable citizen to prison for an offence which is the result of mental sickness. Familiar examples are such delinquencies as those of indecent exposure which are frequently the result of senility, and may be said to be always pathological in origin.

Such was the case of a man who had been on probation on and off from 1937 to 1946, having been convicted fourteen times, always on charges of indecent exposure, particularly to small girls. He was a likeable individual, courteous and anxious to co-operate. His children had been sent away from home owing to the wife's concern regarding her husband's frequent misdemeanours and subsequent disgrace. He was an intelligent worker, although he tended to change his employment frequently owing to these offences. He was a picture of despair on having committed each new offence, and his probation officer was always afraid, knowing how he felt regarding the disgrace brought to his family, that he would do some harm to himself. During his last probation he was treated by the Institute for the Study and Treatment of Delinquency and since the completion of his probation in 1946 appears to have committed no further offences. The maximum sentence he could have received for his offence, says his probation officer, was twelve months' imprisonment. "This would have disrupted his whole mode of life and employment, and his position would have been very difficult; instead of which, by probation, he was given the advantage of being able to talk quite freely to an adult who had his interests at heart, and to whose advice I am sure he paid all attention. If he had gone to prison I feel he would have been completely lost."

There are people who are, by temperament, and sometimes even by physique, less well equipped for the avoidance of crime than others; they are more vulnerable. This is particularly true in civilizations like our own, where the complicated interaction of government with the everyday life of the population results in a number of regulations with the force of law, whose

significance is not easily grasped by the less intelligent members of the public. I remember the case of a woman, many years ago, who was actually sent to prison for concealing the whereabouts of her grown-up son, a certified mental defective, who had escaped from the institution to which he was committed. The reasons for the law which she had broken, probably even its very existence, were beyond her. Her case would have been a highly suitable one for the use of probation.

This failure to understand the laws which they are obliged to obey is not only a characteristic of mentally retarded people. It is one of the difficulties of administering territories whose peoples are more or less primitive in their outlook. However great the effort to preserve what is best in their traditional justice, where they come into contact with the urban conditions of the modern world they are subject to rules and regulations of which some at least appear indispensable if any sort of order is to be maintained, though one may retain one's personal judgment as to whether they are sometimes more numerous than necessity demands. This clash of systems, the primitive and the elaborated, inevitably produces a considerable number of offences against the law which do not imply a criminal intent. Amongst populations living at a low financial level, fines, so widely employed at present, are to be deprecated, but probation, with its definitely educative element, may be of use to a whole community. To give examples from our own Commonwealth:

> Before the war only a few British territories had legislation giving courts the power of using probation. Since 1945 it has shown very marked growth, and all but a few Colonies of very minor importance have now some measure of probation in operation. As elsewhere, the system has usually been introduced first for young offenders - Kenya alone employed it in the first place for adults. In many other territories, including Uganda, the Gold Coast, Nigeria, Sierra Leone, Jamaica and British Guiana it has been, or is being, extended from juveniles to adults. As yet only a beginning has been made; there are not nearly enough probation officers, though more are being constantly trained. At present these colonial probation officers number over 100 full-time and about 25 part-time officials - men and women, European, African or Asian - whilst their efforts are supplemented in some places by unpaid helpers. I have ventured to introduce this question of the colonial use of probation, since its rapid extension in the last seven years is an added proof that this form of treatment is especially well suited to offenders of a rather unsophisticated type.

I have been suggesting that offenders who are retarded mentally or educationally may commit offences for which probation is a suitable treatment. But it is not only the backward whose temperament sometimes makes adjustment to their environment difficult; though the mentally limited, as well as the mentally unstable and the physically handicapped, offer examples of vulnerability, occasionally mental ability above average, unable to find its right function, may also be a source of maladjustment and law-breaking.

To recapitulate, we see that persons who diverge far from the normal in mental ability (whether above or below the average), in temperamental instability or epilepsy, and sometimes by reason of other physical disabilities, such as deafness or poor sight, may be in particular danger of falling foul of the law. With guidance, many of these "vulnerable" delinquents may be set upon the path of accepted good citizenship; under punishment they are liable to give up the unequal struggle and go to swell the ranks of habitual criminals.

Some of those who need, as it were, an external conscience to guide and control them, may need the support of a sympathetic monitor again and again. Whilst there are cases (in particular those of crimes which show determination, deliberate preparation and long-term planning) in which it would, in general, seem unwise to use probation after an initial failure, the weak-willed, spontaneous offender may in the end respond to the repeated efforts of the probation officer. It has been pointed out that young men who have never, as it were, taken in hand responsibility for their own lives in boyhood, and whose period of military training has inculcated habits of reliance on authority, often leave the army immature in character in spite of their actual age. For some critical years their future is in the balance. If they can be prevented from falling into the class of habitual criminals they may well make good citizens in the end.

Nothing is more striking, in going through the reports of probation officers, than the endless patience they show. A case in point is that of a young man of an extremely neurotic type with four previous convictions who deliberately smashed shop windows and damaged telephone boxes. Let me quote from his probation officer's report.

> "His face was twisted and crumpled and looked very miserable... Enquiries about the medical health of his family revealed that his paternal grandmother also suffered from fits of violence and breaking windows... He was placed on probation for two years. I immediately arranged treatment for him at a clinic and he attended regularly for a year... The psychiatrist reported that this young man was of average intelligence but his timidity and anxiety impaired his performance. He had a poor physique. The fact that he came from a family of intellectual dullness coupled with extremely neurotic qualities in both parents accounted for his present behaviour. He showed obsessional and compulsive characteristics. The fact that he was turned down from the army increased his anxiety and made him fear that he was mentally and physically diseased.
>
> His progress on probation has been remarkably good. After some months of psychiatric treatment he was found to be free from obsessional symptoms and he has now become aware of the trains of thought which have provoked them in the past. The psychiatrist states that he can be regarded as quite recovered and confident in himself and most grateful. He has appreciated all the help that has been given to him and says that the past seems like a nightmare. It is obvious that he has been given a great deal of insight into his condition and is now a much more reliable person. He himself does not feel that he could ever slip back into his old ways. This started by being a pathetic case and has ended very much better than I had hoped."

But it would be extremely unwise to assume that all offences due to mental disease are suitable opportunities for probation orders.

A probation officer informs me that it is mostly in the field of mental health that she has known of cases put on probation without adequate enquiry. Thus in one fairly recent case a woman who had been an inmate in a mental hospital for fourteen years, and released on licence under a society which deals with such cases, was placed on probation in another town without waiting for enquiries as to her circumstances or condition. Here it was obvious that the expert supervision of the mental health welfare workers was much more suited to the woman's needs than that of a probation officer. A mistake of this kind emphasizes the need for full enquiry before the probation order is made.

From the point of view of public security such cases may reveal very notable dangers. Every instance of serious violence to the person, or of wanton cruelty to animals should be regarded as a warning, though even in this type of offence probation has some remarkable successes to show. To quote from a probation officer's report,

> "A man of 67 years with 55 previous offences recorded against him in this country - there also being convictions in Italy and America, 26 were for assault and causing grievous bodily harm. Sentences included terms of penal servitude.
>
> B. J. appeared before this Court in 1946 charged with causing grievous bodily harm and following investigation into his case by the probation officer a probation order was made for a period of three years.
>
> As his record indicates he had led a life of crime and he was antagonistic to any authority. Further, time had not dimmed his natural fire and temper. It will be appreciated that the early days of probation were difficult and fraught with possibilities either way; but gradually B. J. adjusted his outlook and mode of living to such an extent that he not only completed his period of probation satisfactorily but he has not been in further trouble since. He has continued to remain in close touch with the court and recently handed the sum of £5 to the court funds which he had saved from his old age pension and which he insisted on giving as a token of his appreciation and in order that it should be used in assisting others."

I do not know whether in this remarkable case the officer's enquiries included research into the medical condition of the delinquent. May I digress to refer to a history which does not involve the use of probation but which illustrates the necessity of such enquiries?

A recent event has horrified the British people. A certified lunatic, who was already without any doubt guilty of the murder of two little girls, escaped from the hospital where he was confined and murdered another child. Public attention has been directed mainly to the law relating to responsibility

with regard to murder. But to anyone who looks rather further, the most urgent matter revealed by the case is the licensing from mental defective institutions of mentally retarded persons who have already been guilty of serious offences without a complete psychiatric overhaul involving all tests as to their possible danger to the community.

The young man in question had already, before he was licensed, escaped on two occasions and shown violence when re-arrested. He had also made an attempted assault on a young girl, and evidence was given that he said: "What would you do if I killed you? I have done it before."

The law rightly regards with abhorrence the confinement for life of those whose mental abnormality does not render them dangerous, but the release, whether on probation or otherwise, of a youth of this type can hardly be justified without the most stringent enquiry.

Whilst public recrimination rages round the McNaghten rules and the staffing of Broadmoor, it would be more useful to enquire what steps should have been taken to prevent the first release after certification of so dangerous a youth at the age of sixteen. It has now, too late, been discovered that his encephalogram shows very serious abnormality of the brain, probably as the result of encephalitis at the age of six.

Modern science has placed in our hands a marvellous instrument of diagnosis in the encephalograph. Whilst something like one-tenth of the population show some divergence from the normal in its record of their brain function, so that this cannot for a moment be regarded as an index of criminality in itself, yet in combination with an already committed act of violence, a marked abnormality of the E.E.G. might well be regarded as counter-indicating the use of probation. Where the risk appears to be only the repetition of minor offences against property, it may be worth taking.

A third essentially modern attitude of mind comes now to be considered, namely a scepticism as to the extent to which reasoned self-interest controls human activities, and a consequent decline in our confidence in the deterrent efficiency of punishment. Whilst it is recognized as an essential part of treatment in some, perhaps in many, cases, it is evident from a multitude of individual histories that punishment indiscriminately applied has made hardened criminals out of many trivial offenders.

This deformation, this manufacture of criminals, by routine punishment used to be excused in the past on the theory that where one suffered many were warned into good behaviour. It is true that probation has few terrors, but as Beccaria saw long ago, people so easily get used to the idea of a risk of even intense suffering that it is easy to overestimate the deterrent value of harsher methods. But in weighing up the pros and cons for the use of probation, we are certainly compelled to admit that its value in the matter of diminishing crime must be calculated on the theory that a bird in the hand is worth two in the bush; that we dare not sacrifice the hope of reclaiming one offender on a gamble on warning penalties.

The right place of deterrence in treatment has been admirably stated by Lionel Fox in his recent, very important, book.1/

> "For general deterrence, viz., the preventative effect of the penal system on the potential offender at large, contemporary thought relies not on the punitive treatment of the individual offender but on 'the totality of the consequences of being found out' - general prevention is inherent in the whole action of the penal system... It is unlikely that men or women will become better, either physically, mentally, or morally, if the regime to which they are subjected is seeking simultaneously to punish, humiliate and hurt them. And even for those prisoners who are in any event unlikely to become better, there is sufficient evidence that such methods are most likely to make them worse."

This critical attitude towards older forms of punishment has led to demands (not by any means all as yet fulfilled) for a much improved standard of decency, sanitation, and education in approved schools, Borstals and prisons. Their maintenance becomes an ever heavier charge upon the law-abiding members of the community. So the relative cheapness of probation, even when carried out by a fully equipped staff, is an acceptable argument for its use wherever public safety allows, so relieving the pressure upon institutional treatment which is required for offenders more hardened, or more dangerous.

It may seem to have been suggested above that probation can be mainly advocated as a cheap and easy alternative to punishment. To allow this interpretation to stand would be to miss the fundamental meaning of the method. It is rather the substitution for any merely deterrent and negative treatment of a definitely positive aim of educating and reclaiming the erring citizen. Whilst attempts are being increasingly made to give a positive direction to institutional treatment even in prisons, there are immense advantages, where it can be done, in leaving the offender in the normal surroundings of free life, in which his new-found self-control must be eventually exercised.

A very high percentage of those received into English and Welsh prisons for a first offence "go straight" upon release - as high as 91 per cent in recent years. This is in part a tribute to the care with which this class of prisoners is handled in our prisons. But it is impossible to resist the belief that it also demonstrates that treatment in the open by probation might safely be used for many more law-breakers than at present, in a multiplicity of cases which do not offer a grave menace to public security even though they may involve crimes for which a severe sentence is possible by law. In fact, the prognosis of the offender's personality, and not the definition of his crime, will be the determining factor.

Take the following case:

> "W. P. was a man whose prison sentences totalled 42 years. He had been convicted for burglary, bank robbery, forgery and as a confidence trickster. He came under the supervision of the court in 1943. He was

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1/ Lionel Fox, The English Prison and Borstal Systems. London: Routledge and Kegan Paul, 1952.

one of the old school of criminals with a personality as colourful as his record - at times a vigorous exchange of technique ensued until eventually a satisfactory rapport was established. Following a gentleman's agreement and guarantee as to his honesty he was placed in temporary employment, where he obtained an excellent reference as a result of satisfactory work. During the next eight years he was in regular employment where he gave every satisfaction - during one period of sickness his firm paid him his full money and on his return promoted him.

"W. P. remained in very close touch with the court until his death last year. Despite his earlier record there was never any question as to the change of outlook and purpose which he had brought about in himself.

"An interesting sequel, of which W. P. himself was not aware, was that a person as a direct result of his case and knowing of the way in which the man had re-habilitated himself left £15,000 to the court, in order that suitable people shall be assisted."

It seems, then, that the main limit upon the use of probation, where it seems to be the most likely way of reclaiming an offender, should be the effective protection of the public. Perhaps this should be the only limit.

In some legal systems where probation has been somewhat timorously introduced we find statutory limitations as to the kind of offences, the recidivism of the offender, or even his age, which tie the hands of the court in applying this method. English law, which leaves the courts a wide discretion in meting out the sentence, has no legal barriers for the use of probation with the one exception that it is inadmissible for those offences for which the sentence is fixed by law. These are offences for which the court is required to sentence the offender to death or imprisonment for life, or, for the young, to detention during Her Majesty's pleasure. Practically, this statutory exception refers only to treason and murder. Perhaps even these legal fetters are unnecessary for the control of intelligent judges and magistrates.

I have tried to suggest to you some ways in which the methods of probation are in close harmony with the ways of thinking of our epoch, and therefore particularly acceptable for use in certain classes of cases:

First, there is our consciousness of the extent to which the individual is conditioned by his circumstances, with a consequent sense of an obligation upon society to make good its shortcomings in its treatment of him.

Next, there is our increasing awareness of the infinite gradations between a satisfactory mental equilibrium and outright insanity with a consequent realization of the special vulnerability to delinquency in some persons suffering from mental or physical handicaps, and their need of individual help if they are to keep the laws.

A third characteristic of twentieth-century as opposed to nineteenth-century thought is the recognition of the small part played by a rational grasp of prudence in the lives of many people. Where foresight is dim, the desires of the moment obscure the fear of punishment. We are not so optimistic as our forebears as to the universally deterrent effect of mere punishment, unaccompanied by re-training, upon the individual himself or others.

As more and more stress is in consequence laid upon training, probation with its non-institutional background assumes a new importance. There is yet one more point of harmony between the probation system and the thought of today which I should like, tentatively, to suggest to you. Modern research into the early growth of the moral sense (call it conscience or super-ego as you will) tends to emphasize that its beginnings lie first in the mother-child and later in the father-child relationship. Where these relationships are faulty there is a risk that the child's sense of obligations to society will be faulty too.

For very young children in good homes the first dawnings of conscience come through the example and the approval or disapproval of those whom they love and admire. To many probationers, who have missed or neglected this early training, respect for law first begins through respect for the man or woman who as a probation officer represents the State to him not merely as a restraining but as a helpful fatherland. And the community protects itself when it extends that protection even to its rebellious members, sparing no effort to recall them to good citizenship, since the respect of the State for the rights of the individual, even the criminal, is in the long run the one secure foundation for the respect of the individual for the State.

FRAMEWORK OF PROBATION: THE PROBATION ORDER, SPECIAL REQUIREMENTS, SANCTIONS

by Ivar Strahl[1/]

The penal codes contain definitions of the various offences and provide for the suitable measure to be taken in respect of each offence. A striking point about this system is that the measure provided for dealing with each of the offences is considered as punishment for the offence. By other provisions it is stipulated that under certain circumstances this punishment is not to be imposed. In some cases no practical measure at all will be taken, in others the penalty indicated for the offence will be replaced by another measure, often a measure that is not regarded as a penalty.

This system is likely to lead to the view that the application of the punishment provided by the code for the offence is the rule and that non-application is to be regarded as an exception.

It is obvious, too, that, historically, the conditional sentence, conditional discharge and even probation have been introduced as exceptions from a general rule that the offender ought to be punished according to the provision made for the offence.

The continental system of suspension of the execution of sentence seems to indicate that the suspension is still regarded as an exception, since it is thought necessary or at least advisable to sentence the offender although the sentence is not to be executed. One reason why this system is adopted and maintained may be the assumption that a sentence impresses the offender and others more than a mere conviction, but this assumption - which as a general one seems dubious - would probably not be as common as it is if it were not considered to be the natural course of events for an offender brought into court to suffer the punishment provided specifically for his offence.

The adequacy of this view will not be discussed here as far as it concerns those cases where the court does not order any practical step. It is enough to question the view as regards those cases where the court makes a probation order.

It may be that probation was at the beginning regarded as an expedient to except some offenders from the punishment carried by the offence, but nowadays, when it is used frequently and is carefully organized, it appears to be more realistic to regard it, not as an exception from a general rule, not even as a substitute for punishment, but as a measure of the criminal law on an equal with the penalty carried by the offence.

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In fact, the common conception of probation as a conditional suspension of punishment does not seem to be altogether correct. It is true that the probationer is submitted to a treatment that is not meant to be a punishment and that in certain circumstances he may later on be punished for the offence, but there seems to be no imperative reason (if not the construction specified by the positive law of the country) why this should be regarded as a suspension of punishment. More true to the facts and more simple is the conception that probation is a measure which is not a penalty, and that it may in some circumstances be changed later on into another measure, possibly a penalty. It will be seen at the end of this paper that the imposition of a punishment in case of revocation of probation cannot satisfactorily be considered as the passing of a sentence conditionally suspended by the probation order.

The fact that for each offence the law stipulates, for instance, fines or imprisonment but not probation ought to be considered as due only to technical reasons, above all the need for indicating the gravity of the offence. Theoretically it is quite possible to construct a penal code in which the definitions of the offences are not followed by an indication of the punishment of the offender. In the recent project for a penal code for Greenland, a system of that sort has been tried. In most European countries of our day, such a system will meet with the objection that the legislator must not leave it to the courts to determine the gravity of the offence without guidance, and that the gravity of the offence is most practically indicated by the provision of punishment such as fines or imprisonment. It would be unfortunate if such technical grounds resulted in these punishments being given preference over other measures which are at the disposal of the court.

If this view is adopted, the probation order ought logically to be regarded as a sentence, equal to a sentence imposing a fine or imprisonment. The combination of a probation order with a sentence of imprisonment, the execution of which is conditionally suspended, a combination that is possible according to Swedish law, seems illogical.

It is true that legal institutions cannot be developed on purely logical grounds and that consequently the criticism of not being logical is not a serious one. It is, however, important to insist that in a fully developed system probation is to be regarded as a method of dealing with an offender, which is in principle on a par with all other methods.

Systematically, it seems right from this point of view to regard probation as a counterpart of imprisonment. The latter is an institutional treatment, the former a treatment in the open. The parallel is striking where, as in Sweden, the execution of imprisonment does not aim at causing the prisoner suffering in addition to the loss of liberty.

This comparison between institutional and non-institutional treatment demonstrates that the contrast between them is not necessarily absolute in the sense that the court ought to be bound to choose a measure that is either entirely institutional or entirely non-institutional. Just as imprisonment is often followed by parole by which the person is subject to supervision and requirements, it is quite possible for probation to include institutional treatment.

Systematical or theoretical reasons should not make us draw a sharp dividing line between the various measures. On the contrary, it is proper, considering the need for variety in the methods of dealing with offenders, to eliminate any gulf between institutional treatment and treatment in the open.

If probation, as has been advocated above, is to be regarded as a measure equal to imprisonment in the sense that it ought not to be regarded as a substitute for imprisonment but as an alternative, it would seem right to make it independent of the consent of the offender.

In selecting cases suitable for probation, the court must of course pay attention to the attitude of the offender. His refusal to admit the facts is certainly in most cases an indication that probation is not advisable, but denial should not absolutely preclude a probation order, since it sometimes happens that an offender refuses to admit for quite honourable reasons, for instance because he wishes to preserve the esteem in which he is held by his children.

Again, it is obviously of great importance for the success of probation that the offender should consent to the probation order. Doubtless it is useful for the judge to explain the meaning of the probation order and for the order to be made with the full understanding and the acceptance of the offender. This proceeding ought to be the normal beginning of probation. Mostly the offender is anxious to get a probation order and accepts the conditions without objection. If he objects, probation is seldom advisable, but the judge should be entitled to make a probation order in spite of the offender's objection if it is reasonable to assume that the order will be effective. Often the offender is not able to predict his own conduct.

The aim of probation treatment is the social rehabilatation of the probationer, and the treatment must be directed towards this end. This is an important point. As a rule, probation work will not be successful unless it is carried out with the one aim of rehabilitation. To let the purpose of punishing the probationer influence the treatment is not sound. It could easily spoil the atmosphere of confidence and co-operation essential for success. Consequently, probation should not be ordered unless it is thought useful for the social rehabilitation of the offender.

As to the length of the probation period, it follows from the purpose of probation that it should not - at least not to the same degree as a term of imprisonment - depend on the gravity of the offence. It appears, therefore, to be advisable that the duration of the period should not be left to the court to decide in the probation order but should generally be fixed by statutory provision at a certain number of years - three years seems to be an adequate period in most cases - and that the administrative authority should be empowered to shorten that period if the probationer behaves well, and to lengthen it if required by his conduct or other circumstances. In cases where the court orders a special treatment or cure that ought to continue for a time exceeding the ordinary statutory period, it is recommended that the court should be enabled at once to fix a longer period.

The court ought to be authorized to impose in the order, special requirements as to the behaviour of the probationer during the probation period. Indeed, the court should determine the outlines of the probation treatment. Objections can justly be raised to letting a probation officer give directions that deeply affect the life of the probationer, and still more to giving such a power to a voluntary supervisor who is not trained for probation work. It is desirable, too, that the court, in resolving whether or not to make a probation order, should be as fully aware as possible of what the order will imply. And last but not least, it is poor psychology not to let the probationer know right from the start what he has to do. As has been said before, the court should make clear to the offender his principal duties and this can best be done by specifying the main requirements in the order itself.

Owing to the variety of the cases, it is desirable that the court should have a large number of requirements at its disposal. The court ought to be authorized to make requirements about the employment of the probationer, his lodging, his place of residence, his education or training, his use of leisure time, his budgeting, and so on.

As for lodging, it is desirable that those who lack suitable accommodation can, in case of need, be placed in probation hostels created for the purpose, i.e., places where probationers live while working outside. Even probation homes, i.e., institutions providing both for lodging and for occupation, may be used, though with a certain prudence since living in a probation home considerably restricts the freedom of the probationer. The value of probation homes chiefly consists in affording lodging, occupation and a calm atmosphere in the difficult period immediately after the trial.

As a rule, placing the probationer in a private home and getting him an ordinary job is preferable to an institutional arrangement. It is reasonable that public funds should be available for the purpose.

The requirements should not be merely restrictive. Efforts must be made to create conditions which actively help towards the social rehabilitation of the probationer.

From this point of view it is often doubtful whether it serves the purpose simply to forbid the probationer to consume intoxicating liquor. This requirement should be resorted to only upon mature consideration and preferably in connexion with arrangements which will help the probationer to keep abstinent, for instance an order for him to join a temperance society. Obviously, the difficulty in enforcing his observance of a requirement of abstinence is a strong reason against the use of it. On the other hand, an explicit order of the court to abstain from liquor may be of some help to probationers who really want to get rid of a habit which is not too inveterate. The requirement will also be of use when it is obvious during the probation period that the probationer has not abandoned his drinking habit. In that case the requirement will make it easier to point out to him that he has not fulfilled the conditions of the probation order.

As physical or mental disorders are frequent among offenders, it is important that the court should be able to prescribe appropriate medical, psychiatric or psychological treatment. The pre-sentence investigation ought to be thorough enough to reveal the need for such treatment. To a certain extent it is possible to meet the need of treatment by using public or other free health services but special financial provision is desirable for the treatment of probationers. The treatment may be institutional or non-institutional as the case may be.

It seems doubtful whether the court should have unlimited freedom in the choice of requirements. A statutory enumeration is perhaps preferable in order to avoid inappropriate requirements.

Requirements should not be retained longer than they are needed. Provision ought to be made to adapt the requirement to the actual need.

As supervision and requirements aim exclusively at the social rehabilitation of the probationer, they often do not interfere ostensibly with the way of living he would have adopted if he had been left alone. At least he may pretend, and others may think, that the probation order in fact has not changed anything in his life. There is a serious risk of probation being regarded as a "let-off".

If that were a common view, it would keep the courts from using probation as extensively as would otherwise be thought fit, since it is, probably rightly, deemed necessary that the great majority of the criminal cases brought into the courts should be dealt with in a way suited to deter people from committing offences. It may also in many cases assist the improvement of the probationer if he has to recognize that his offence has consequences.

These considerations lead to the conclusion that probation ought sometimes to be combined with some sterner measure.

For this purpose the court may insert in the probation order a requirement to the effect that the probationer shall compensate by instalments for the damage caused by his offence. Nothing seems more likely to make him realize the harm he has done. In many cases such a practical lesson will certainly prove psychologically useful. It is what might be called with some reason a kind of retributive justice, which will be understood and judged sensible.

It is, however, of great importance that the court should not impose payments which are beyond the means of the probationer or which may impede his improvement. Not the reparation of the damage but the effect on the probationer of having to pay should be the reason for the requirement. The compensation, though of course desirable, should be considered only a side-effect. Under these circumstances it is obvious that in most cases only a part of the damage can be made good by such a requirement, often only an insignificant part. It seems advisable, nevertheless, to insist that the probationer should, if possible, pay something.

In cases where there is no damage to compensate for, a fine may be substituted for the payment of compensation. It is true that a fine is not of the same pedagogical value as compensation, since it does not represent the reparation of damage caused by the offence, but it may still be useful in making the probationer realize that his offence is not looked upon as a trifling matter.

In some countries, for instance in France, it is possible simultaneously to pass a conditional sentence and to fine unconditionally for the same offence, provided that the offence carries a penalty of both imprisonment and fine. The suggestion made here is that this system should be extended so that it should always be possible to use fines in combination with a probation order (or a conditional sentence or conditional discharge). An argument in favour of this proposal is furnished by the fact that it produces a bad impression if, of two offenders, the one who has committed the less serious offence is fined, but for the other a probation order is made that interferes very little with his manner of living. By fining the probationer as well, an appearance of injustice can be avoided.

There is reason to emphasize that combining probation treatment with an obligation to pay compensation or a fine ought not to change the aim pf probation as a method of treatment. It is true that the obligation to pay compensation by instalments is imposed in the probation order as a requirement and that it is a sanction rather than an element of treatment. To that extent the statement above, that no requirement should be imposed unless it tends towards the social rehabilitation of the probationer, must be modified. But both the imposition of instalment payments of compensation and the imposition of a fine are to be regarded as supplementary to the treatment. The supervision and the requirements concerning the treatment should be carried out with the sole purpose of rehabilitating the probationer, notwithstanding that the probationer has been enjoined by the court to pay compensation or a fine.

A comparison with imprisonment may here be of some interest. It is quite possible to maintain that the execution of a sentence of imprisonment should be entirely directed towards the social rehabilitation of the prisoner. That is, in fact, the standpoint of the Swedish law. The loss of freedom is considered to be suffering enough; to inflict additional suffering is not intended. In providing imprisonment for an offence, the legislator knows, of course, that this means imposing suffering upon the offender. In sentencing the court knows the same. But the sentence is to be executed with the sole purpose of rehabilitating the offender. The analogy to probation is obvious. Certainly, the legislator is well aware that probation treatment may be disagreeable to the offender. He may purposely increase the disagreeable effect by adding obligations to pay. The treatment still remains a treatment that is to be carried out with the sole purpose of rehabilitation. By adding some unpleasant requirements, probation is, however, made suitable for more cases than before. Its scope of application is enlarged.

These statements may appear audacious. They tend towards diminishing the difference between probation and imprisonment. It will be remembered, however, that an essential difference exists since it is stipulated by law that the period of imprisonment shall in some way be measured by the offence. That seems to be the essential difference that makes imprisonment a punishment and probation a non-punitive measure.

The next step from combining probation with a fine would be to combine it with imprisonment. This is practised in the Netherlands (where probation takes the form of an auxiliary measure attached to the conditional sentence or, sometimes, to the conditional suspension of criminal proceedings). The practice

is considered to be appropriate in cases where a completely conditional sentence is undesirable in view of considerations of general prevention, while a completely unconditional sentence is equally undesirable having regard to the potentialities of probation from the point of view of special prevention. However, the practice is open to the objection that in those cases parole seems to be more convenient. If a man is brought into prison, it appears advisable to take advantage of the opportunity to observe him there before arrangements are made for the post-institutional phase.

Nonetheless, it seems well worth considering whether it would be useful in some cases for a short stay in an institution to precede ordinary probation treatment. What is aimed at is a further development of the idea of the probation homes with a view to establishing a compulsory institutional phase as the starting point of the training of some probationers.

Actually, a project with this purpose is being discussed in Sweden with reference to juvenile offenders. These are mostly put on probation, the courts being averse to sending them to prison. Borstal training is sometimes used but is often too serious a measure. Probation is, however, often not altogether satisfactory. It happens too frequently that it is looked upon as little more than a let-off.

In order to make it a more efficient instrument of criminal justice, the idea of combining it with institutional treatment is put forward. A court dealing with a youthful offender should be authorized to stipulate in the probation order that the probation period shall begin with a short stay in an institution specially provided for that purpose. These institutions are intended to be small and simple - not at all like prisons. The inmates will have to work chiefly outdoors under careful supervision. The stay is intended to last about three months, regardless of the gravity of the offence. It is intended to use the time for training the probationer - group techniques of treatment may be attempted - but it is advisable not to indulge in expectations of the result of the treatment as such. The main reason why a youth should be sent to one of these institutions is that it is, sometimes, important that something should happen to him after the offence and the trial. The intention is not to punish him but to make him realize that his offence has consequences. Possibly, that will have a good influence on him. At the same time it will increase the exemplary value of probation, but this is not likely to be stressed as the purpose for which the measure should be imposed.

The efficiency of probation depends, however, to a very great extent on the organization of probation work. The importance of using special probation officers and the value of voluntary work will not be discussed in this paper, but a few words ought to be said about the question whether probation work is to be directed by the courts.

For historical reasons a judicial control of probation services is very common. If probation is regarded as a method of dealing with offenders, in principle equal to other measures of criminal justice, the question arises why among all these measures this special one alone should be carried out under the supervision of the courts. Certainly, such an exception from the ordinary

principles of the administration of justice is quite justified if there are good practical reasons for it. It is certain, too, that the practical circumstances are different in different countries. It ought, however, to be pointed out that probation work is by no means easy. If the courts are made responsible for its proper administration they are given a difficult task and a task for which they are as a rule neither especially qualified nor organized.

For these reasons it is not surprising that the idea of creating special local bodies for the guidance of probation work has been put forward. According to the drafted Belgian legislation of 1948, a special probation commission in each province was to take over most of the functions that are in some other countries fulfilled by the court. In Sweden, the courts are authorized to appoint special commissions for the same purpose. As part of the programme of rendering probation more efficient, it is there proposed to establish commissions of this kind to deal at least with the juvenile probationers. The commissions, each of which would be responsible for an appropriate district, would always include a judge interested in social work. The other members would be chosen from other professions in order to make the commission as competent as possible for its special task.

If commissions of this kind are established to deal with youthful probationers it may be reasonable to give them the same authority as a juvenile court or similar organization for carrying out the measures they order. If that is done, it is, however, doubtful whether the term probation is still justified.

It appears to be an established rule that requirements imposed by a probation order cannot be directly enforced. It is said that they are mere conditions for suspension of punishment.

As a general rule this standpoint merits support. Most requirements are such that an executive power to enforce the compliance of the probationer would be of little value. And it seems rather an advantage that the court has to take care not to be too exacting in imposing requirements.

It is to be observed, too, that the enforcement of the requirements imposed by the court is not always essential to a good result of probation. The failure of the probationer to comply with his obligations under the probation order may indicate that a change in the requirements is called for. The requirements must be open to revision at any time in the probation period. A certain tolerance towards the conduct of the probationer is also necessary. The enforcement of the restrictions imposed by the court on the behaviour of the offender is not a purpose in itself. The guiding principle must be to do what is at any particular time thought useful for the social rehabilitation of the probationer.

It is, nevertheless, obvious that as a rule the probationer ought not to be allowed to disobey the probation order without any consequences. In many cases the breach of the obligations will justify an extension of the probation period or the imposition of more restrictive requirements, provided always that the probationer is judged to need the prolonged supervision or the new requirements.

More purely disciplinary is a formal admonition, which may sometimes prove effective. Provided that the probationer is able to pay, fining him for the breach of his obligations seems to be an expedient method. It is adopted by English law. According to English law, compulsory attendance at an "attendance centre" is also available.

The last resort is the revocation of the probation order.

The most frequent reason for revocation is the commission of a further offence during the probation period. It should likewise be possible to revoke the probation order if the probationer is later found to have committed an offence which escaped detection until after the order was made. And, as has been said above, the mere failure to comply with the probation order may be a reason for revoking it. It appears to be a sound principle that, as a rule, no revocation should be allowed on account of information which is received after the probation period has expired.

When the probation order is revoked another measure must be substituted.

Since the substitution of one method of dealing with the offender for another ought not to be made without careful examination of all relevant circumstances in the individual case, it is desirable that revocation should never be made mandatory by statute, but should be left to the discretion of the court.

In like manner the choice of the new measure in case of revocation ought to be made with due consideration of the individual circumstances. If the legal system of the country is that of combining the probation order with a conditional sentence fixing a penalty, the revoking court should have perfect liberty to change the penalty or to substitute another measure.

When the probationer's conduct has led to revocation, its effect on the court will often show itself in a sentence that is more severe than it would have been had it been fixed immediately after conviction. "When the conduct of a probationer proves that the community requires more protection from him than was first thought necessary, because of the court's insufficient knowledge about him, it is only logical that the failure of probation should be considered when the sentence is finally passed."2/

In other cases it appears convenient that the court should be authorized to fix a comparatively small penalty. Otherwise some difficulty will arise in dealing with a misdemeanour or slight offence committed by a probationer who was put on probation in consequence of a grave offence, because the necessity of passing a severe penalty would unduly restrain the courts from revoking. It seems reasonable too that the court should be authorized to consider the restrictions to which the probationer is already subject.

2/ Thorsten Sellin, "Probation in the United States", in De nordiska kriminalistföreningarnas årsbok, 1939, p. 299.

In sum, the court will have to make a realistic evaluation of the total situation of the offender as it is at the time of the revocation and to make new arrangements accordingly.

It would not be quite accurate to say that its task is to pass a sentence conditionally suspended by the probation order. That definition does not take into account that what the court does is to substitute one measure for another. The real nature of the proceeding involves considering a number of circumstances which were not known at the time the probation order was made.

Revocation is, however, not frequent. The expiration of the probation period is the ordinary way for probation to come to an end.

It has been suggested above that the probation period should be fixed, preferably by statute, at a certain number of years. The nature of probation as a method of individualized treatment makes it essential that the court should be authorized subsequently to modify the duration of the period according to the observations made in the course of it.

Sometimes it may be necessary to lengthen it. Extension will hardly be justified unless the probationer fails to fulfil his obligations under the probation order, and there ought to be an absolute maximum term of duration. If continued too long, probation may prove too onerous for the probationer and thus defeat its own ends. If the desired results cannot be attained in, say, five years, the probation order ought to be revoked and replaced by another measure or allowed to end without revocation by the expiration of the probation period.

More often it is found during the probation period that the probationer no longer needs any supervision or guidance. In that case probation should be concluded, since it is likely to be prejudicial to maintain supervision and restrictions which are no longer of any use. To stipulate a minimum term of duration seems unnecessary. A court that has made a probation order is not likely to terminate the probation period before it has been satisfied by experience that the probationer will do well.

According to the legislation of some countries, for instance Sweden, the possibility of revocation continues to exist until the expiration of the probation period originally fixed, even if the court before that time removes the supervision and the requirements. It is thought to be of some use to let the probationer undergo such a trial period even though he is found not to need supervision and guidance all the time. The idea is that the suspension of punishment continues beyond the period of actual probation supervision. One may argue that probation being a measure on a level with other measures of criminal justice - a point of view that has been advocated in this paper - the case ought to be closed with the cessation of probation treatment. The arrangement may nevertheless be of some value, particularly in cases where probation treatment has been terminated very early so that probation has in fact not differed much from a conditional discharge. It may be observed, too, that the arrangement allows re-establishment of probation treatment if it turns out that the withdrawal of such treatment has been premature. As a matter of fact, the arrangement offers some resemblance to parole, being a method of resuming a treatment once discontinued.

PROBATION CASE WORK: BASIC PRINCIPLES AND METHODS

by Peter W. Paskell[1/]

When, in 1907, the United Kingdom Parliament first made legal provision for offenders being placed on probation under personal supervision, it did so in the knowledge that the value of such treatment had already been demonstrated by experiment. As has so often happened, progressive thinkers had gone ahead of legislation and had improvised means of applying to offenders the newly developing case-work methods although such treatment had no foundation in the Statute book. Long before the twentieth century courts had made use of their power to bind over persons to come up for judgment, if called upon to do so, and the idea of placing these offenders under some form of supervision flowed naturally, if slowly, from this practice. Whether these two principles were first combined in America or England may be open to some doubt but certainly toward the end of the nineteenth century courts often referred offenders to available voluntary workers on this basis.

In England the first police court missionaries, as they were then called, were appointed in 1876 by the Church of England Temperance Society with the primary object of "attempting to arrest the downward careers of men who made their first appearance in the police courts through drink" but it was soon found that they were also able to help other people and their use by the courts was facilitated by the Summary Jurisdiction Act of 1879, the Probation of First Offenders Act, 1887, and the Youthful Offenders Act of 1901.

Justices asked these missionaries to advise and help men and women who had been dealt with under these Acts and so the procedure of binding-over was linked more and more with a condition that the man or woman should accept voluntarily the supervision of another person. These early workers were not officially officers of the court but the results they achieved emphasized that then, as now, any successful case work is based fundamentally on co-operation and not coercion.

It was not surprising to find such methods of dealing with delinquents growing at that time for they were part of a new general approach to the social problems then existing. Preceding years had seen vast changes in our social structure with the development of science, industry and commerce, interests which had demanded overriding consideration and had led to the mass aggregation of people in large cities, under conditions which were not only appalling physically but also degrading morally and spiritually. It is in the realization by the Victorian reformers of these conditions that case work may be said to have been born. They were faced not only with the task of alleviating material

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distress but of regenerating the elements of character and will-power which alone could bring the victims back to be self-respecting members of the community. Charity disbursed sporadically - sometimes for questionable motives - was touching merely the fringe of the problem and it was a most significant step when in 1869 the Charity Organisation Society - "a general family casework agency" - was founded, with a policy of organized relief based on careful personal enquiry and a realization that personal contact and sympathy may be decisive factors in any attempt to help the individual in distress. It was appreciated too that every attempt must be made to find the fundamental causes of the trouble rather than rest content with superficial alleviation.

The problem of these first case workers was to get to know their clients, to make real contact with individual people and their surroundings and so the early foundations were laid on which the modern case-work approach has been developed.

Thus the application, referred to earlier, of individual contact and influence with a view to rehabilitating the offender was in harmony with one of the contemporary methods of attack on other social problems and, of course, probation must throughout be regarded, not as something apart, but as one of the social services dealing with one part of a wide problem.

The keystone in the 1907 Act relating to probation was the direction to the probation officer "to advise, assist and befriend" - remarkably human language for a legal draughtsman and indicative surely of the spirit which promoted the legislation. The fact that these words, repeated in the most modern British legislation on probation (the Criminal Justice Act, 1948), still form the keystone is perhaps more than anything a tribute to the interpretation which they have received from the probation service in the forty-five severely testing years. However praiseworthy the sentiment in these words, their implementation is no light task.

Advice is seldom well received (and less often carried out) unless offered by established friends. Assistance given with anything but care and understanding can do more to break than make the bonds of friendship and thus for the probation officer befriending is the basis on which his work will be built.

The probation officer, like any other case worker, has to operate within the framework prescribed for him, and this has certain peculiarities. He has to work under the control of the criminal law with the strong authoritarian role of the court and its powerful legal sanctions in the background.

The general failure to realize this position has led to misunderstanding from two very different points of view. The reactionary approach, tending always to find virtue only in the punitive element of any court sentence, sees in probation treatment a weak "let-off", quite overlooking the control which the court retains throughout the probation period with the right to apply more stringent methods if necessary. The court, and therefore the probation officer as an officer of the court, has a responsibility to the public which is not to be forgotten. Always bearing in mind the constant need to face hard reality, there seems everything to commend, wherever possible, treatment aimed at finding and remedying root causes of the trouble and thus removing what can otherwise become a permanent liability to society.

The view has, on the other hand, been expressed that real case work with probationers is often impossible because the probationer, unlike the client in other forms of case work, has participation forced upon him and because the situation has an authoritarian background. This view is quite compatible with accepting that there is hope of success with some who have deviated so far from normal behaviour. It is true that in England and Wales anyone over the age of fourteen may refuse to be placed on probation and although this is valuable in order to emphasize the importance of co-operation, no doubt for the person concerned it is little more than the choice of a lesser evil. Many, of course, who seek the assistance of other social agencies do so in circumstances no less compelling or less likely to cause resentment. The greater difference perhaps is in the breaking off of the contact - a step determined by the individual in ordinary case-work but by the court for probationers. This power to control the length of contact can be very useful if properly employed, but it has obvious dangers if not handled with care and discretion.

The preservation of this balance between the interests of the community and the interests of the individual, although ultimately one and the same thing, is not easy to maintain and calls for skilled work and understanding. That it is possible has been demonstrated empirically over the last forty-five years. It requires the maintenance of sympathy and understanding between both court and probation officer, and between probation officer and probationer. Although our concern here is chiefly with officer and probationer, the vital part the court has to play in these relationships apart from, and in addition to, its legal functions, must not be overlooked. No court which does not cultivate understanding with its probation officers or study and appreciate the full implications of probation can hope to achieve the best results from its use.

One of the basic concepts of social case work is that treatment cannot be forced upon another person since temporary domination, whatever sanction is in the background, seldom, if ever, brings about lasting results. To help another person we must accept him as he is with an honest respect for his capacity as well as regard for his need, to solve his own problem aided by whatever help he can be given. Similarly, to endeavour to exercise the supervision of probation by a series of threats and controls is not only a travesty of the system but courts disaster. The much vaunted "good talking to" has little merit and less effect from a stranger, and it is really only through the establishment of a personal relationship between probation officer and probationer that real results can be expected. Just because it is so much a matter of personalities - the personalities of both officer and client, with all their infinite possible variations - the process is not easily described.

The emphasis on personality should not for one moment be taken to minimize the value of scientific knowledge, experience and training, which cannot be overstressed, but rather as a reminder that, unless these are linked with certain qualities of character and temperament, they may be largely ineffective. A shortcoming of the earlier social worker was lack of scientific knowledge about human behaviour and reliance to a greater extent than is necessary today on intuition and trial and error. Improvement in this direction need not, and indeed must not introduce any risk of the social worker becoming callous and inhuman, and knowledge which tends to produce this result is either of doubtful validity or imperfectly understood and used.

It is generally accepted that nothing really constructive can be attempted in any form of case work until the fullest possible information about each individual problem has been collected and here again the probation officer has often to undertake a particularly difficult task. Although the court has the responsibility for deciding on the treatment of every proved offender, courts generally realize the impossibility of reaching the wisest decision in the absence of all possible information about the offender, and have increasingly turned to the probation officer to give them this.

At the start, then, a picture is required of the offender's environment, including, for instance, information about the home and its neighbourhood, family relationships, school or employment, recreation, and religious and social activities; an assessment of the apparent problem, how far it can be tackled in the offender's present setting and how far any desirable modification of the setting can be achieved. Furthermore, it must be remembered that different persons react differently in similar circumstances, not only because of innate characteristics but because of the influences and experiences of past life, and information must be gleaned concerning such influences and experiences and their part in the present problem. The officer must endeavour to ascertain the emotional undercurrents in the home, to assess their importance for the special difficulty under review and, if need be, to envisage a way of adjusting them. To do all this in the time usually available for such an enquiry is seldom easy and sometimes impossible and the limitations imposed by the time factor cannot be ignored. To rush an investigation which goes into personal issues is inadvisable and may well introduce difficulties and misunderstanding which are a great obstacle to any future treatment. At this stage the probation officer often meets for the first time the person who will ultimately come under his supervision and inevitably lays the foundation upon which the all-important relationship must be built - another consideration to be borne in mind alongside the obligation to provide an honest report.

The primary task, then, is to produce a survey of the whole position and to help the court toward a reasonable prognosis which will make the prescription of treatment a studied decision and not an optimistic guess.

Every probation order produces its own particular problem and the approach to every individual requires its own technique - technique because in the first instance the officer's approach must be controlled by professional skill while springing from a warm heart. Ultimately, the relationship must, however, necessarily be emotional rather than intellectual, based on that stability which, in this sphere of frustration, rejection and insecurity, is indeed at a premium. In each case some plan of treatment must as far as possible be conceived, based of necessity on the facts as they are then seen, but capable of modification and always sufficiently flexible to meet the changing situation. One of the merits of probation is its flexibility alongside the constant stability of the officer. Generalization is impossible. Young children up to about eleven years of age are still very intimately bound up with their parents and inevitably in such cases the officer directs his attention primarily to the home; with older children in the 12 to 16 age group, where the spirit of independence is beginning to develop, the emphasis probably needs to be first on the offender, with the

parents linked in later. The impressionable teen-age girl offers a different problem from the harassed mother of a large family - the young adolescent is not reached in the same way as the irresponsible married man. Probation may represent to the child the first situation in which he has been accepted calmly and objectively, but warmly, for what he is as an individual, without threats or promises, and held to a standard of conduct which does not constantly fluctuate; to the young gangster it may show that tough, anti-social behaviour is not necessary to retain his self-respect. The variations are infinite.

It would indeed be optimistic to suppose that a plan of campaign is readily apparent in all cases and often much of the earlier work will be of an exploratory nature. Human problems do not fall readily into groups with causes and remedies following easily to mind. Neither, of course, in the probation setting, do analysis and synthesis fall into distinct phases and both will continue side by side throughout probation to varying degrees. The probation officer learns most about his clients by encouraging them to talk freely - to talk in their own way so that the feeling behind the words lends colour to what is said - while he listens with an interested and sympathetic ear, matched maybe by a discreet and observant eye. The first constructive step may well be taken at the first interview if the client is led to feel that he is a person worthy of consideration, attention and interest, for thus may his opinion of himself as a responsible individual be increased, enabling him to deal with his own problems more adequately. Again, early interviews may elicit symptoms of hostility or suspicion toward the officer which are really related to earlier reactions to other people and their expression may both be enlightening and also serve to draw off venom which is contaminating the client's whole system.

The appropriate treatment for the particular case is often evolved gradually as understanding develops, and to this end the probation officer arranges his interviews with the probationers, either privately in an office, or in the home, or at any convenient meeting place and with a frequency to be determined by the needs of each case. The flexibility provided by the English Probation Rules, 1949 (Rules 51 and 52) allows for this individual arrangement, for frequent visits at times of crisis (by no means always at the beginning), for increasing home visiting in one instance, for meetings only away from home in another. Work on the case does not go on only when the officer and client are together, for there will be in all probability a great deal of executive arrangement and certainly a great deal of consideration and planning, so that, however contact may be arranged, it is thoughtfully conceived with definite aims in mind.

Any plan must, of course, take note of the material factors in the situation (such as employment, health, leisure, household shortages) which must be dealt with and to this end a wide knowledge is required of the various appropriate agencies, the services of which the probationer can be encouraged to use. The tendency to do things for, instead of with, the probationer must be avoided - although it would often be much easier - for this does not help toward making an independent, capable person. Anything suggesting charity may increase an existing sense of inadequacy or may promote resentment, but by working with the probationer to cope with such difficulties a medium of contact is often provided which helps to cement understanding.

Throughout the vicissitudes of the probation period the officer must remain steady, dependable, unshockable, able to withstand disappointment, be understandin and secure; disapproving may be of certain conduct but unwavering in his contact and feeling, encouraging but not patronizing, patient and tolerant but not weak. From the first he must make clear to the offender the requirements of the Order and the terms on which society, as represented by the court, is prepared to allow him his liberty. The officer should epitomize and clarify authority to his client and endeavour to secure his acceptance of the reasonable dictates of such authority (by understanding them better), leaving no doubt that the ultimate sanction for disobedience is in the hands of the court. When the probationer shows no desire or no ability to respond to probation then there can be no doubt that the court must be informed. By doing this the officer does not for one moment cast off the probationer and the preservation of the relationship throughout such a time can be vital to further constructive treatment, whatever such treatment may need to be. Indeed, it is often following such a time of stress when the probationer, and possibly his family, have seen the attitude of the probation officer stand an exacting test, that progress is really made, for so often in the past has such testing of other relationships produced rejection and emotional strain.

If, after a period of probation, breakdown makes further court action necessary, then the officer can provide the court with a report based on prolonged observation and knowledge, which is of greater worth than the often hastily prepared original report. Since, also, probation is the treatment operating in the environment in which delinquency occurred, the officer has access to much background information to assist those who may have to deal with the delinquent subsequently in the artificial atmosphere of an institution.

Probation failures there will inevitably be, but what in the field of human relations constitutes success or failure? To the case worker, the clamour for numerical assessment can be dangerous, for he must never be haunted in his actions by thoughts of annual reports or criminal statistics. The case classified as a failure because of a technical breakdown may be, to the student of the real values involved, a greater success than another who makes no progress but avoids further legal trouble. Perhaps the surest assessment of the value of probation is the confidence shown, not only by probation officers, but by courts generally, who have, at times, applied it for practically every crime from manslaughter and rape down to the most trivial offence. The real answer is not in theoretical argument but in the certain fact that it works.

Results in such work are not for the most part exceptional - in many cases improvement is indiscernible or slow - and there is no place in probation work for those who need the gratification of sensational reform. The probation officer finds his inspiration in the sure knowledge that he is the agent of a penal treatment which is both positive and constructive, a treatment which seeks in a difficult section of the community to cherish human rights, integrity and essential goodness. In a world in which these things have so often to fight for their very existence, the probation method of treatment cannot but commend itself to any civilized society.

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PROBATION AND MENTAL HEALTH SERVICES

by P. A. H. Baan[1/]

Editorial Note: In the text of his paper which he prepared for advance circulation among the participants in the Seminar, Professor Baan restricted himself to the subject of the rehabilitation of mentally disturbed delinquents. In speaking to the Seminar he dealt with the more comprehensive question of the contribution of clinical psychology and psychiatry to the rehabilitaion of offenders in general. In view of the complementary nature of the contents of the advanced text and of his oral presentation, it was decided to publish both texts (with minor editorial revisions), and they are here identified as "Part I" and "Part II" respectively. It should be noted that the term "rehabilitation" is used here in a sense roughly equivalent to the Dutch "reclassering", that is, a combined probation, parole and after-care service.

PART I

Though the idea of the rehabilitation of offenders (reclassering) - at least in our country - is very old, it has been a long time before one could speak of a positive contribution of psychology or psychiatry to this field. Thus the first recognized private rehabilitation association was founded more than 100 years ago, whereas specific after-care for mentally disturbed delinquents is only a few years old.

One cannot maintain that there were formerly no mentally disturbed persons among delinquents, nor that they would not have been recognized. It was, on the contrary, realized early that there were a far higher percentage of mentally unstable or disturbed persons among the perpetrators of asocial and antisocial acts than in the average population. It is true indeed that it took a long time to realize that this percentage was even considerably higher than had been thought at first. We owe it to the talent and the tenacity of men like Vervaeck, Aschaffenburg, Kinberg and others, that more and more attention has been drawn to this qualitatively and quantitatively extremely important group. More was, however, necessary to prove that psychology and psychiatry had an important part to play in the field of criminology. Two world wars, which profoundly shocked and influenced our whole civilization, created at the same time the atmosphere in which not only psychology and psychiatry, but also law, sociology, criminology, etc., experienced a powerful development. The common denominator of the development of all these sciences has been that they extended their attention from the narrower professional fields to society, and - far more important - especially to the individuals constituting this society. Having abandoned the nebulous but lofty position of their professional sciences, psychiatrists and psychologists have studied the individual human being in his proper milieu.

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In this way it has become possible for the increasing social and individual distress to be faced by experts from various sciences and spheres of action, who previously had worked more or less at cross purposes, but are now brought together in view of their common task. This change of front and this growing together, these efforts at integration of the various facets of the problem of "man and world" in a new anthropology has taken place surprisingly rapidly. Psychology, which till a short time ago, has moved principally in the experimental field, turned by way of an interest in developmental studies into a clinically oriented psychology. At the same time, under the influence of the development of philosophy, the phenomenological methodology came into being, which brought about a deepening and enrichment of the knowledge of the human being behind the experiment. The psychiatrist, who at first contented himself with diagnosing, classifying and labelling, suddenly became interested in what happened underneath these labels and headings. Impregnated by the analytic way of thinking, psychiatry developed via the stage of an "einfühlende" approach into the phenomenological psychiatry of to-day, which has become the starting-point of social psychiatry. In this way the psychiatrist, for example, discovered neurosis as an endemic disease, whereas formerly he only noticed psychoses.

The psychiatry of the nineteenth century made room for Freud and his followers, but at the same time branches sprang from this tree towards the doctrines of Adler, Jung and the modern Americans like Horney, Fromm, etc. Besides this, and also in connexion with it, the psychiatry of Jaspers, and later on of L. Binswanger, developed and thus it became possible that psychology and psychiatry came down from their ivory towers to the centre of society.

Thus far I have given a very brief outline of the development of psychology and psychiatry to a stage at which contact with the probationer was made possible for the first time. In my opinion, the probationer has been considerably influenced by this contact, if only because the accent, which at first lay on favour and at best on charity, has been shifted, while retaining this charity, to a more expert attitude towards the probationer. It is evident, on the one hand, that helping the socially stranded fellow-man may have charity as a driving force, but it becomes more and more obvious that this charity is not a favour to be granted from above to the less fortunate. We must see this helping of our neighbour as a duty, which can only come to its best realization when practised as a profession, and preferably as an art at the same time. Thus it becomes obvious that the mentally disturbed among the probationers should be helped by expert people.

When we ascertain how far psychology and psychiatry can be of help in rehabilitation, we must examine first of all in which phases of the operation of the legal order relating to the mentally disturbed delinquent expert rehabilitation plays a part. In principle these phases are the following in the case of the mentally disturbed delinquent:

(1) Observation:

(a) Before trial or before sentence, when the judicial authorities ask for a clinical or a polyclinical opinion on the personality of the delinquent, his responsibility and usually also on the measure to be taken eventually.

(b) After sentence, when the authorities entrusted with the execution want further information about the convicted person.

(2) Selection: In this phase, which does not yet exist in many countries, it must be established whether the offender should be placed in an ordinary or in a special prison, or to what institution he should be sent.

(3) Treatment.

(4) After-care.

Here we may emphasize the fact that these four links belong to an unbreakable chain and will continually flow together. In order to be able to perform the work in these various phases properly and to realize the results of the Brussels Seminar as far as possible, it is of the utmost importance to find a good form of organization in which the various possibilities, perhaps different in every country, can be co-ordinated.

In order to be able to give you an idea of what seems to me a possible method in this field, I should like to start from the fact that in my country we have already begun to realize some of the ideas put forward above. In reply to the questions put to me by the Directorate of the Seminar I should like to outline a scheme for you in which our still very modest possibilities are supplemented with the minimum requirements for the optimum functioning of this work. This method seems the more obvious to me, because in practice our small country with its ten million inhabitants appears to be a unity in which the after-care of the mentally disturbed can be fairly well organized, both as to the territory over which this care is extended, as well as to the number of inhabitants. Therefore I should like to suggest the following scheme as a proposition for possible application in other countries as well. A country that is five or ten times as large in population or over could build up a similar organization in five or ten separate districts.

Our country numbers 19 court districts and it is the intention, which is only partly realized, that each court, apart from the psychiatrists who are chosen by the autonomous judge, will have at its disposal a half- or full-time psychiatrist, trained in judicial and forensic problems, who will be able to place his diagnostic and therapeutic advice at the service of the police, judicial, prison and probation authorities. Naturally a court district that has a great number of inhabitants and where a differentiation of jurisdiction for adults and children exists, will need more psychiatrists, including child psychiatrists, as experts.

In this way the judicial authorities will be able to profit by the latest developments in psychiatry. Indications as to the treatment of a person brought before these authorities, can be established in the best possible way in consultation with the experts.

It stands to reason that the psychiatrist will preferably form part of the team of which the psychologist and particularly the trained social worker (if possible the psychiatric social worker) are members. In a certain number

of cases there will be need for thorough clinical observation and therefore we have in Holland a special psychiatric observation clinic, of which we should have two or three at least, or one in each of the five Courts of Appeal districts (cf. the "Annexe Psychiatrique" in Belgium). In these clinics cases that are individually and socially too difficult for a relatively superficial polyclinical examination, can be investigated in a more thorough way by a trained staff consisting of the ordinary prison doctor, psychiatrists, psychologists, social workers employed for pre-sentence investigations, as well as case work, male and female nurses and prison personnel. In this way, just as in free society, the prison doctor or the court psychiatrist helps the judge to indicate who must be examined and who not, while for special cases there are hospital facilities.

During this phase it must, as a matter of fact, be taken into account that the observation is only a link in the above-mentioned chain. Moreover, with the expert and human ways of observations, as practised by modern psychiatry in its teamwork with psychology and social science, a start is already made with rehabilitation, because in the interpersonal contact between the professional examiners (and preferably the judicial authorities) and the offender, the possibility of a better insight into his inner psychological structure and particularly into the motives that led him to his offence, is opened up. Therefore observation itself already holds a therapeutic and after-care modus.

After conviction, in the phase of the selection, preferably to be carried out by the same team that was responsible for observation, this principle can be worked out even further, because in consultation with the offender, and taking into account his potentialities, it is carefully considered in which way he may be placed best by judiciously weighing the respective interests of jurisdiction, public order and the individual himself. In so far as the mentally disturbed delinquent will be selected immediately, or after his imprisonment, to be sent to an institution, it is of the utmost importance, also for the rehabilitation possibilities, that in the final selection the team of experts should co-operate with the psychiatrist or the warden of the institution concerned. A selection based exclusively on a study of files is paper work and therefore - as human relationships are concerned - useless and even senseless. The past has presented us with the bill for this. The advantages of joint selection by the expert team, preferably the same that conducted the observation, and by the person who is going to carry out the treatment, lie particularly in the fact that the latter in the course of years chooses his own pupils, and in the fact that the selecting staff is in a position to learn a great deal from more regular contact with the practitioner and notably from the mistakes made in view of the indications for selection.

The third phase in which clinical psychology and psychiatry play their important parts, is that of treatment. It is incomprehensible to me why public mental health in general is still treated in such a stepmotherly fashion, and the public mental health of those who come into contact with the law in particular. One can be glad of the fact that for the treatment of tumours of the brain or pulmonary diseases funds can always be found to enable the founding of clinics with good and differentiated medical staffs and the most

expensive equipment. One can only be disappointed that the mentally disturbed in free society do not yet get a fraction of the care they need (not even 1 per cent of neurosis as an endemic disease can be treated for want of money and expert help) and that most governments are not in the least moved by the really terrible conditions and the completely backward methods of treatment prevailing in institutions for mentally disturbed delinquents. It goes without saying that, apart from the human duty we have towards them, mentally disturbed delinquents most urgently need treatment according to the latest methods, if only because the problem of criminality runs into incalculable sums of money (in the United States more than the cost of the Marshall Plan) without adequate efforts being made to equip institutions for the treatment of the mentally disturbed at least in accordance with modern requirements.

In the phase of treatment, therefore, the social, psychological, psychopathological and psychiatric aspects will have to be integrated more markedly than in the previous phases, so as to leave no stone unturned to change the mentally disturbed delinquent, who was previously a danger to the social order and to himself, so that he may again become a valuable human being from his own point of view, as well as from that of his family and society. This is really the minimum ideal for governments, doctors, psychologists, social workers and spiritual advisers.

Institutional treatment being an abnormal situation, even for the mentally disturbed man who, after all, is also a "homo socialis", should from the beginning be directed towards the aim of his return to free society and thus to after-care; observation and selection are thus already preparations for rehabilitation. As a matter of fact, observation and selection can only make sense and appear to full advantage, when a high degree of differentiation exists in the possibilities of treatment.

It does not do to lump together psychopaths and everything that is hiding behind this vague, generally hardly psychiatric label, schizophrenics, neurotics, mentally deficient, endocrinically disturbed, epileptics, etc. Yet each separate group ought to go to an institution with a homogeneous population to which must be devoted psychiatric energy and knowledge of a high scientific and practical level, at least comparable to that devoted to the non-criminal mentally disturbed (which is, unfortunately - and in contrast with the situation of the physically ill - only given to the privileged group).

We must have good and modern institutions for neurotics who - according to recent data - form such a high percentage of criminals (Karpman, Cleckley, Alexander, Glover, Mackwood, Abrahamsen, etc.). Just as the military services already have their facilities for neurotics, we should have well-equipped institutions for modern individual and group psychotherapy, occupational, medical, endocrinological and surgical treatment (e g. castration).

Karpman and Abrahamsen in America, Stürup in Denmark, and so many others are proving daily that the defeatists are wrong and that at the least a social remission of these patients is really possible. To this we can add the fact that what is presented to us as hopeless and labelled too soon as

psychopathy, on careful observation proves to consist only to a very small extent of sufferers from diseases in which the constitutional element is so predominant that for the time being one might be inclined to qualify them as untreatable.

In the fourth and last phase, that of after-care, the aid of psychology and psychiatry is absolutely essential for the work of social workers. Gratefully we think of the assistance laymen have given here to the best of their knowledge. Their efforts in some exceptional cases led to success in the rehabilitation of mentally disturbed offenders when they possessed the wonderful gift with which non-experts sometimes can cure diseases. Usually, however, their attempts to help their disturbed fellowmen were praiseworthy and even touching, but in consequence of their inexpertness they made serious mistakes which, without their suspecting it, led to unfortunate consequences which were usually reflected in recidivism. Another very small fraction led to utter failure. This kind of rehabilitation is generally based on the old concept of charity in the form of alms, without the new view of helping as a profession or rather an art having penetrated sufficiently. What we need for the mentally disturbed, from the slightest neurotic to the gravest psychopath, are experts, and not only the psychiatrist and the clinical psychologist, but also and particularly the trained psychiatric social worker, who together with other social workers and, if need be, with "specialized" laymen working under their supervision, surround the offender with their expertly indicated, and in due course correctly proportioned care. For not only too little and insufficient care, but also too much care may do a great deal of harm.

As to these "specialized" laymen, it will be known to all of you how the ordinary psychiatrist may fail in the treatment of the feeble-minded, whereas the teacher from the special elementary school for feeble-minded may work wonders with the mentally deficient previously so difficult.

In this fourth phase there is, of course, a fine opportunity for co-operation and co-ordination between the existing mental health services (psychiatric clinics, hospital facilities, child guidance, bureaux for alcoholics, bureaux for marriages and family counselling, etc.) and the existing private, municipal, provincial and governmental after-care services, while naturally the co-operation of the departments of the labour-bureaux, other social services concerned with the employment of the mentally disabled, and rehabilitation services should be sought.

In this rehabilitation work the homes of semi-freedom are of particularly great importance. In these the delinquent, before venturing from the institution to free society - a transition which is often far too great - remains for a few months under somewhat expert guidance, and from which he can do his work in free society. There is also an urgent need of homes where women with their new-born children may be put under probation. For it often appears that this keeping the child is an important pillar for probation.

In this connexion the fine work of the Institute for the Study and Treatment of Delinquency in London should be praised highly as well as the work of the "Alcoholics Anonymous", etc.

In the Netherlands we have - besides the existing rehabilitation associations for so-called normal offenders, of which only the Roman Catholic Association has a small department for the mentally disturbed - a special mental after-care association, that is, a private association subsidized by the Government. At the moment this association has more than 1,200 mentally disturbed offenders under its supervision, either in the framework of the conditional sentence, or of conditional release from an institution for mentally disturbed delinquents, etc. It receives the requests to accept this supervision from all courts in the country and then - after the preparation of a plan for probation - this organization contacts a psychiatrist and an expert social worker besides a "specialized" layman in the place of residence of the offender, who in this way returns to society or - in the case of conditional sentence - may remain in it. In this way this special rehabilitation service co-operates with already more than 130 psychiatrists and hundreds of social workers, while the association is in close contact with the Psychiatric Observation Clinic and the Selection-Institute of our Prison-Administration and with the various institutions in which mentally disturbed delinquents are treated.

In spite of the short period of time that we have been working in this way, the foundation has been laid for good co-operation and co-ordination between the rehabilitation services and the many facilities which our growing public mental health offers. We have the impression that this co-operation and co-ordination might not have been built up so efficiently if the area and the population concerned had been larger, and we started, therefore, from the idea that this design, partly grown, partly chosen in our small country, is a workable one, though we are only at a very modest beginning.

In our country this expert after-care, as well as the total rehabilitation service has sprung historically from private initiative. It has been Dr. F. S. Meyers, who, particularly in the case of the after-care of mentally disturbed delinquents, has given the impulse to this beneficial work. But also apart from this historical development it seems to me that the principle of free private, rehabilitation services, subsidized by the Government and also in this connexion under a certain measure of control and stimulation on the part of expert government officials, is to be preferred to a government system. The co-operation between this private, special service and the judge, the prosecution and the Government (the executive) is excellent.

For all these four phases workers are needed, many workers, and why not? For baby and child care, the fight against tuberculosis and so many other urgent branches of physical health service, most civilized countries are fully equipped with experts. Why must we always insist upon equalization of that other, at least equally necessary branch of the health service, especially in these days when it appears that the public mental health is such an indispensable basis for the harmonious structure of a people?

In the training of these workers psychology and psychiatry can and must play important parts, besides, of course, criminology, criminal law, sociology, etc. As regards psychology, the fundamental ideas of experimental, but particularly of developmental, psychology will be indispensable for the foundation of a more justified psychological thinking. Besides this the teamworkers will have to be

initiated in the far more difficult, but for practical work essential, modern psychological orientation, as phenomenology has given it to us. As to the relevant knowledge of psychiatry, the social workers will have to know its main features, the clinical symptomatology and the general psychopathology. In our country, within the framework of the Universities and of the Psychiatric Observation Clinic of the Department of Justice (a very badly housed, but fortunately scientifically well-equipped, small institution), the possibility exists that not only social officials, and the higher prison personnel, but all rehabilitation officers will have the opportunity to attend university courses. Far more important than books and theoretical knowledge, however, is the contact under expert guidance with the disturbed delinquents themselves. Colloquies, practical work and rather long terms in a psychiatric observation clinic, but also in a mental after-care service, child guidance clinics, etc., are absolutely essential.

Besides the indispensable theoretical knowledge it is necessary to become open-minded to these special problems, to get the right attitude. This turns the scale for this work. Only by learning to examine, understand and treat hundreds and hundreds of probationers, and parolees, under expert guidance and in a team of trained fellow-workers, is the necessary basis formed on which a probation officer with mentally disturbed delinquents who comes up to the minimum requirements and who will fulfill his task properly, can maintain himself and mature.

PART II

The written paper which I submitted to the Seminar was restricted to the rehabilitation of mentally disturbed delinquents. The Directorate thought this subject too specialized and asked me to use my original paper as a background, but to concentrate more on the question of the extent to which clinical psychology and psychiatry can contribute to rehabilitation in general, to give a brief indication of the kind of knowledge that is relevant, to deal also with the problem of the use of psychiatric and psychological examination, i.e., the selection of cases of the prognosis, and to finish with the possibilities of co-ordination and co-operation between the mental health and other medical services and the rehabilitation service.

So I will try to give you my opinion about these extremely difficult questions, referring from time to time to my original paper, in which I sketched how - in my opinion - special probation for mentally unstable delinquents should be set up and organized.

One of the distinguished speakers said to me during the dinner party at the Royal Naval College that the Seminar had in fact closed after Friday's afternoon session and that the psychiatrists now had to have the last word as they always liked to have. This was a nice joke and I could appreciate it, though it gave - as all jokes do - only a part of the truth, but it referred to the actual position psychiatrists and psychiatry have in the world. Anywhere a psychiatrist appears he is joked at or praised skyhigh or rejected. People make jokes or look at him as if he were a prehistoric monster full of mystical forces of good

and evil and I believe that even the underestimation must be an expression of the general over-estimation of the psychiatrist and his work. Because underestimating him, they seem to expect too much of him. This overestimation derives from a lack of precise knowledge, as in primitive societies unknown and incomprehensible things are surrounded by an atmosphere of fear, or devotion, or hostility and so on. This attitude can still be seen in the present attitude towards psychiatry and those who practise it. But I can tell you that a psychiatrist is not a magician, but an ordinary man who knows only a little bit in the unlimited field of psychology, psychopathology and psychiatry. And so I come to my first point: psychology and psychiatry cannot be of any help when probation officers over-estimate them and expect wonders.

It is only this generation of psychiatrists who - under the influence of two world wars and the tremendous change in cultural, sociological, psychological and other concepts brought about by them - have enlarged their mental horizon and have discovered society as a necessary field of work. Twenty years ago psychiatrists thought they were secure in their ivory tower and so they were responsible for the general misunderstanding of their knowledge and possibilities. Modern psychiatry has developed and has to deal with as many problems as there are objects of study. Modern psychiatry does not believe as before in the labels and the classifications, e.g., psychoses, mental deficiency, neuroses, psychopathy, but begins to see the human being underneath these labels as a human being in this world, with the aspects of constitution and environment, with heredity and social circumstances, but also with innumerable problems unsolved, some partly unsolvable because they are beyond the reach of human skill. With the improvement and refinement of our diagnostic methods we begin to see how much harm we have done by so readily classifying a man as a psychopath or as a mental defective. Better psychological, sociological and medical methods have shown very clearly that factors we thought to be unchangeable are much more complex and composed of partly changeable, partly unchangeable factors. To give you an example: of 1,000 persons sent to us under the diagnosis of psychopathy - that is, a constitutional, partly hereditary disease for which no cure existed up till now - of these 1,000 persons, after a thorough examination, only 15 to 20 per cent appeared to be psychopaths in the strictest sense of the word. The others were neurotics, mental defectives, post-epileptics, post-encephalitics, endocrinologically disturbed, retarded in their development, etc. This experience in my work is the same as that of some competent investigators in England, the United States, Switzerland, etc.

Another example: of several hundreds of men, women, boys and girls, labelled as mentally deficient, after a careful investigation, only 15 or 20 per cent appeared to be feebleminded, the others being at worst backward and mostly emotionally so neglected or frustrated that they gave the impression of being mental defectives although they were only "relatively" deficient.

The medical, psychological, psychiatric and social measures taken after the diagnosis proved this result: for most of these people were able to adjust themselves. And here I come to the point Dr. Grünhut has put forward: namely, that in most of these cases it is better not to speak of therapy but of adjustment, because the word therapy tends to isolate the human being under our care, as the word reformation also does. Adjustment is a far more appropriate

word for the measures we take to deal with the delinquent in his world, delinquency being only a special section of the general problem of maladjustment. In teaching the probation officer the principles of psychology and psychiatry, the problem of maladjustment and its causes will be our chief object. As a matter of fact the psychoses (also a partly social-medical and juridical word!) are more or less outside the scope of such teaching, though it will be useful for probation officers to know something of the general pathology of this difficult field in which we have the same doubts and troubles as in the other fields mentioned above. To give an example: until some twenty years ago psychosis was diagnosed more than necessary; because of the lack of appropriate nursing techniques a high percentage of the patients did not leave the mental institution for the same reason. After the introduction of new methods of occupational therapy, nursing techniques, case work, and new forms of medical treatment, it appears that several cases which twenty years ago would have been sent to a mental hospital now are cured in an ordinary clinic or sent to an institution; more than 80 per cent of the cases are being discharged.

The probation officers will, however, have to deal principally with the neuroses, mental deficiency, psychopathy and a few other mental states in which "vulnerability", as Miss Fry has put it so well, will be their particular responsibility. As to the neuroses, the skilled and well-equipped probation officers, referred to by Mr. Paskell and by Dr. Carroll in their papers will have to know a great deal about the concepts of the Id, the Ego and the Super-Ego and its interactions. He will be tangled in the dynamics given to us by Freud and his school, also by Adler, Jung, Horney, Fromm and so many others in the last forty or fifty years. Here I warn particularly against training persons who are, relatively speaking, laymen exclusively in one school: mostly that of Freud's psycho-analysis. Although Freud was one of the most outstanding psychologists of history, I feel we must stress the fact that his doctrine is - how could it be otherwise? - restricted and cannot and will not deal with the whole man. Neither do Jung, Adler, Binswanger etc. give all aspects. They all contributed significant new ideas, but made only a partial contribution to the solution of that great mystery man. Let us be thankful for all that these great men have given us and have taught us to help us to understand our fellow human beings better, their social and espcially their criminal behaviour, but let us constantly bear in mind that we should use these concepts with discernment and that we should approach our clients with prudence and respect and never adopt a mere technique vis-à-vis the man or woman who by the law is put under our care and in many ways is so dependent upon us.

The probation officer must, of course, know a great deal about the dynamics of personality, about characterology, developmental psychology, motivation and also about character deviations in inadequate family circumstances (such as a domineering mother, a brutal father, selfish parents, oral frustration in the first months of life, hospitalization, the problem of the Oedipus complex, the castration-hypothesis and so on). But he can use all this knowledge only after careful training - not only a theoretical, but also and above all a practical training in the framework of the team that was recommended by all the nations that were represented in Brussels, namely, the general practitioner, the psychologist, the psychiatrist and the social worker. This team, attached to every Court, as an observation, selection, treatment, probation and after-care unit, should, if possible, investigate all cases or, if this is not possible, make a certain selection.

How to make this selection is a very difficult problem. It does not do to say that only sex crimes, or crimes of violence or recidivists should be investigated. If, unfortunately, we are obliged to choose, it is a problem in se, whether we should give preference to the first offender or to the recidivist. The minor offender aged 18 may be a greater problem and danger to himself, his family, surroundings and society than the recidivist, who, of course, needs the help of the expert team. The expert team obviously has to co-operate closely with the judge and often also with the prosecution and it is to be hoped that in the near future these functionaries will have more and more inside knowledge of the extremely important new factors put forward by Miss Fry in her lecture. This would create the best atmosphere in which both the protection of society - be it with "fermeté", as Prof. Clerc from Switzerland insisted - and the rights of the individual, who after all is part of society, will be safeguarded and in which these less fortunate members of society will have an opportunity to become rehabilitated and to become self-respecting, law-abiding and thus happier fellow citizens.

The only basis on which the probation officer can build his work - and here I agree with Miss Fry and Mr. Paskell - is by befriending the probationer and this must be a real and good basis for it is the corner-stone of all religion and philosophy in the world, and especially of our Christian culture which has "love thy neighbour as thyself" as one of the most important but difficult commandments. But, as others have said, helping with a warm heart is not enough in our complicated society. It must be combined with knowledge. As I told you before, I think knowledge is extremely important, but it can be dangerous too, and it is for this reason that I think we must exact a high standard from the workers. It is a very good thing that Great Britain has given us an example of how and in which direction we should take steps to make probation officers ready for their fine, but extremely responsible task, but I think we must ask more. Although the rate of clearly mentally disturbed delinquents is low, as low I think as the rate of clearly normal offenders who come "to the knowledge" of the police, the group between those two extremes is large and very complicated in structure. We cannot say that the normal offenders should be punished, the abnormal should be sent to the psychiatrist, and that the remaining 80 per cent should be left to be dealt with by the probation officer. The highly trained, skilled, very intelligent, emotionally stable, flexible and independent probation officer, in short those who Miss Younghusband thinks suitable for this work (and I agree with her), will - just as the most prominent and able psychiatrist - need to be part of a team nowadays. I think, therefore, that the question I have been asked, namely: what kind of knowledge is relevant, could be answered as follows: every kind of knowledge can be relevant but only when the probation officer can keep in close contact with extremely skilled and trained supervisors and with special psychiatrists (for up till now most psychiatrists have little idea of the various and complicated problems in this field) and with the other members of the team the Brussels Seminar recommended as the basis of an adequate medical, psychological and sociological examination and as a starting point for satisfactory probation, parole and after-care work.

How shall we practise this? In the lecture you have in your hands I sketched the formation of these teams and their co-operation with the existing mental-hygiene facilities for observation, diagnosis, in-patient and out-patient

treatment, and after-care. In my country we are only in the first stage, but we have already good facilities, though insufficient in number, for observation, selection and after-care, and we also have some facilities, though still inadequate, for the treatment of mentally disturbed delinquents. This work is done by the psychiatrist in closest co-operation and teamwork with the probation officers to call upon psychiatrists. In my country with ten million inhabitants, 1,200 delinquents are under the care of 130 psychiatrists with the help of 100 probation officers and psychiatric social workers and several hundred volunteers who work under the supervision of these probation officers who are partly - but not sufficiently - trained under the scheme that is also valuable in Great Britain.

It may interest you that of these 1,200 of our most dangerous and also most sick criminals - sick not only from a social but also from a psychiatric point of view - more than 70 per cent appears to be adjusted, although all were sent to us diagnosed as psychopaths, mentally deficient or in terms of another label suggesting hopelessness and which would justify defeatism.

If some of you think that the last word about psychopathy has been spoken and that psychopaths would not be suitable for probation, I hope that these facts will give you a new view of the problem that is still only at the beginning of its solution.

The help of volunteers appears to be extremely valuable, if they are under the supervision of well-trained social workers and/or psychiatrists who have case-conferences with them and give them the opportunity to bring their questions, and to receive instruction, advice and help once or twice a month or even more. I can assure you that I agree with my compatriot Dr. Muller, who made it a part of his life work to see to it that volunteers should be used in the probation and after-care team, provided that they are carefully selected and constantly and skillfully supervised. So it will be possible - and in my country it has been done prudently but increasingly for more than 100 years - to educate the people in the idea of probation and rehabilitation. This will be good for the people who, as a whole, can only gain by developing their altruistic feelings, thus exercising the principle of "befriending".

I believe that every probation officer must work in a team. In several countries there are already probation officers or social workers appointed to provide the judge of each court with information and to do probation work. Why not - as I put it in my lecture - appoint psychiatrists, full-time or part-time, to serve each court district?

I believe that it must be possible to ensure that no probation officer is appointed to a court and begins his work without having had his theoretical and particularly his team training for at least one year in one or more centres where the modern approach to delinquency is practised. Such training should preferably be at a forensic clinic, such as our centre in Holland or the Institute for the Study and Treatment of Delinquency and the Portman Clinic in London, but otherwise in a centre such as the Tavistock Clinic or Belmont Hospital, where I have observed the work of Dr. Maxwell Jones with the greatest

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I believe that every probation officer must work in a team. In several countries there are already probation officers or social workers appointed to provide the judge of each court with information and to do probation work. Why not - as I put it in my lecture - appoint psychiatrists, full-time or part-time, to serve each court district?

I believe that it must be possible to ensure that no probation officer is appointed to a court and begins his work without having had his theoretical and particularly his team training for at least one year in one or more centres where the modern approach to delinquency is practised. Such training should preferably be at a forensic clinic, such as our centre in Holland or the Institute for the Study and Treatment of Delinquency and the Portman Clinic in London, but otherwise in a centre such as the Tavistock Clinic or Belmont Hospital, where I have observed the work of Dr. Maxwell Jones with the greatest

admiration. Then the probation officer will be made conscious of the problems, he will obtain the right attitude for this work and he will in particular learn in which cases and when to call upon the other members of the team (although at a distance). Then he will develop that degree of skill and insight which is necessary to become a probation officer with the qualities mentioned by Miss Younghusband, Dr. Carroll and Mr. Paskell. We should not be content with superficial, short, theoretical courses and we should not be content with a compromise, for what I have given is a minimum plan for optimum work, and why should we not aim at optimum work as it affects human beings? We have done this for hundreds of years for the physically ill.

I also believe that the governments must be made to realize this. And why not? For the physically ill sufficient money is always obtainable and research has brought great success: thirty years ago tuberculosis was an incurable disease, now it belongs to the most curable; twenty-five years ago diabetes was an incurable disease, now it belongs to the most curable; twenty-five years ago pernicious anaemia was an incurable disease, now it belongs to the most curable; fifteen years ago meningitis was incurable, now it is curable in most cases. How much money is spent in research on the causes of cancer? This seems to me right and human.

So we must in the same way have research into the causes not only of psychopathy, but also of maladjustment in general. This will, of course, cost money. We must, as was recommended in Brussels, have teams with well-trained, highly skilled probation personnel, and this also will cost money. But Dr. Grünhut and many others have said to us already that the money for this purpose is only a fraction, not much more than 10 per cent of the cost of imprisonment and institutional care and so I think we must make haste to catch up with the research, the diagnostic facilities, the treatment and the after-care in the field of physical illness.

We can already be thankful for what has been achieved, but we cannot be content. What we want is to be just to our fellowmen. Not only the people, but also the servants of the people, namely the judge, the doctor, the social worker and so on, will be satisfied when this aim is achieved. I hope that members of this Seminar, who may advise their governments, will agree with some of my points of view, especially where I am warning against a compromise. This would be of the greatest value for the realization of the plans I have been hoping to be able to put before you.

PERSONAL RELATIONSHIPS IN THE REHABILITATION OF PERSONS ON PROBATION

by Denis Carroll[1/]

This paper is a brief general account of the nature and use of the personal relationships involved in the diagnostic and therapeutic work of the probation officer. Understanding of these relationships and an ability to manipulate them satisfactorily are indispensable aids to the officer in his task of rehabilitating the offender. Much can be done during training to develop these qualities, but it must be remembered that the handling of personal relationships is largely an art and that success depends much upon the intuitive flair of the probation officer. In consequence, procedures for the selection of probation officers should be such as will ensure that those selected possess, or seem capable of developing, this flair in adequate degree and with sufficient insight. Their subsequent training should aim at improving their native flair and insight, while also equipping them with that basis of knowledge and experience which, too, will aid them to make a proper and suitably self-critical use of these qualities.

The degree and form of the personal contact between probation officer and probationer may vary with the purpose of the probation, the stage of the probationary process, the type of treatment that is carried out during the probation, and the personal characteristics of both the offender and the probation officer. Whatever the degree and form of this contact may be many subjective factors are inevitably involved in it. It is both necessary and practicable that the technique of the probation officer should be designed to cope with these factors.

For the present purpose it is convenient to divide the probationary process into five stages:

(1) examination,

(2) establishment of a treatment situation,

(3) treatment proper,

(4) termination of treatment,

(5) the post-probation period.

The same psychological factors govern the personal relationships at each of these stages, though in varying degree. Owing to the need for brevity, many of these factors are mentioned only at one stage.

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Examination

This should be a fairly comprehensive enquiry. It must, inter alia, reveal as fully as possible the causal factors at work in the offender, and such circumstances as exist which may help or hinder his treatment. On the basis of this knowledge a really adequate list of treatment needs can be made, i.e., a list of all those things which should be dealt with to ensure success. This list must be translated into a treatment plan, i.e., a list of the measures that can and should be taken to meet all the treatment needs, and of those by whom they should be undertaken. It is not always possible to carry out so full an examination. The extent to which it can be achieved before sentence is affected by the variations in the judicial process under the different legal systems. It is useful, nevertheless, to bear these objectives in mind, and they can always be realized within the limits of the officer's capacities during the probation.

There is a real difficulty in training officers in the scientific and critical habit of mind necessary for such a thorough diagnosis of causes and systematic planning of treatment. Experience in the United Kingdom has shown that, while the full solution of this problem may remain an ideal, a partial solution of real practical value is possible and much has already been achieved to this end.

The desirable standard of examination calls for skillful interviewing. There is no standard of technique suitable for all. The aid and example of those skilled in such interviews is valuable. Each officer, nevertheless, must work out for himself a technique that fits his own personality and abilities while paying due regard to the other subjective factors which influence interviews. This applies to all five stages of probation.

The offender's co-operation in the interview cannot be commanded, nor should it be taken for granted. Frequently, it must be elicited. It is important to bear in mind that he needs an incentive to co-operate. His desire for understanding and for an appreciative response provides the most reliable and the most frequently found basis for his co-operation in the interview. It is this incentive as opposed to that of getting cured, either of illness or criminality, that is constantly found. The interview technique should respond adequately to this desire. When it does so the interviewer will get information more fully and more accurately than he otherwise would. In particular, he will get a better picture of the personality and intimate life of those he interviews, for he will tend to make them feel both willing and secure in telling him so much about themselves.

Such techniques aid the development of a therapeutic attitude in the probationer, because they tend to make him more willing to let the interviewer help him and to believe that he has the ability to do so. The attitude of the offender to his rehabilitation by any subsequent means in which the interviewer (or any person or institution associated with him in the mind of the offender) has a hand, may be profoundly affected by the attitude of the interviewer as perceived by the offender. It is easy to induce an anti-therapeutic attitude, which may be of considerable persistence in some types of offenders.

It is desirable that the probation officer should possess certain attitudes of mind towards his work and his probationers. His outlook must be a therapeutic one. He must have the desire and purpose to help, though he will, in time, become unduly anxious and fail if this takes the form of a "compulsive" urge to cure, since such an attitude results from a kind of obsessional preoccupation with cure and an undue difficulty in accepting failure. He must show - and preferably feel - interest in whatever the offender says. He should be prepared to listen patiently and realize that all that is said can be revealing and turned to account. He must be able to give the offender the feeling that his problems and personality are understood. He should be capable of a sympathetic attitude yet not be sentimental. He must be able to show interest, yet avoid taking sides, and he must be able to conduct the interview in a non-critical way. If time presses he will need considerable tact and ingenuity to put this into effect; but it can be done if he really does possess these attitudes of mind towards those he interviews. Such an approach is fundamentally human and objective and is of value throughout the probationary process, though its mode of expression will vary at different stages.

In short, the feelings and attitudes of mind of the probation officer and the probationer towards each other (and towards their interview and its purpose) have an important bearing on the conduct and outcome of the interview. This also applies to the probation process as a whole.

Whatever his native endowments may be, the probation officer will find that owing to subjective factors, the problems of attaining the desirable attitudes and the management of these personal relationships in general are not easy of solution.

Some subjective factors

The delinquent's first ideas and feelings about the probation officer are determined more by the contents of his own mind than by realistic appreciation of his actual observation of him. This is by no means always apparent to the uninformed. The mentally healthy tend fairly quickly to adjust their general attitude to fit their objective observation though some subjective bias usually remains in matters of detail. In many the subjective phase is so fleeting that it excapes notice. Delinquents do not form a homogeneous group in this respect and show wide individual variations. The source of such subjective views may be simple, e.g., something about the officer reminds the offender of someone he dislikes and in consequence he feels some antipathy to the officer. Such superficially-caused attitudes soon change provided that the officer does not react unduly to them. In general the source is far from simple. What happens is that feelings, ideas and attitudes originating in the important emotional experiences of early childhood leave a permanent imprint in the mind, though the individual is largely or wholly unaware of this. He tends automatically to identify a new situation or person with one of these buried memories, e.g., he will identify authority with some specially significant authoritative figure in earlier life, or a maternal figure with his mother. He then transfers to the new situation and the persons in it the feelings and attitudes that characterized

the earlier situation. This transferring of feelings is called transference. When the feelings are friendly it is called positive transference. When they are hostile it is called negative transference.

The neurotic person shows transference in a marked and persistent way, but it is shown to some extent by all and its growth during a series of interviews may overshadow the reality of the situation.

Some individuals show a marked tendency to develop transferences that are predominantly of one sign (positive or negative) to anyone who attempts to treat them. In some types of recidivist a negative transference is very common and considerable patience, toleration and understanding of such feelings will be needed before these unfriendly feelings are adequately lessened by ventilation. This will ultimately result in the appearance of such positive transference as is within the offender's capacity. It will, moreover, make it possible for him to see the probation officer more objectively and respond to his friendship. Some show a mixture of positive and negative transference at the same time, which is extremely tiresome even to those who understand it. Still others appear to lack the capacity to form stable positive transferences. This will be apparent in the lack of stability in their friendly relationships with others in the past. It implies that it will be difficult or impossible to carry out personal therapy on them.

It is sometimes possible to detect a stereotyped pattern in these relationships. Thus an individual may show throughout his life a tendency to display the same kind of feeling to anyone in authority, irrespective of his other personal characteristics.

Indeed the process may go further. History-taking may reveal a tendency to repeat a particular pattern of behaviour over and over again, despite the lessons of experience and the irrationality of such behaviour on many of those occasions. This occurs also in normal people. It is important to look for such behaviour patterns. There may be types of situation which are usually reacted by crime. Whatever treatment is adopted, these stereotyped reactions tend, moreover, to reappear. The treatment plan should allow for this possibility by so arranging the mode and milieu of treatment that such reappearances of difficult behaviour can be managed with the least possible change either in the attitude of those dealing with the offender, or in his environment, or in the general form of his treatment.

It is important to note that the behaviour, feelings, ideas and attitudes which the offender displays as a result of transference or for other subjective reasons may differ markedly from those that would be produced if his judgment and observation were objective. The probationer will always lack awareness of this state of affairs at first. Allowance must be made for this and for the fact that there is wide individual variation in the time taken to acquire insight and in the degree to which it is attained.

The establishment of a treatment situation

This is virtually the initial stage of treatment and consists of the period during which the officer's main objective is to establish a satisfactory rapport with the offender.

Successful personal treatment of the offender is only possible if he develops a friendly feeling towards the therapist and has confidence in him. Both transference feelings and objective appreciation of the probation officer's attitude can contribute to this development though the subjective factors predominate at first. It is profitless to try to influence the delinquent's conduct by any persoanl approach before the relationship shows such friendly features in some strength. Indeed, the attempt to do so will cause delay and may well provoke opposition and hostility. In particular moralizing and critical comment at this stage will cause difficulty. The delinquent will not yet be willing to act on advice that runs counter to strong wishes and habits in himself because he is not convinced of the wisdom and friendliness of the adviser. If advice at this stage is necessary it should be cautiously given and not pressed if it arouses adverse feeling. In general, advice should be confined to practical matters. It should be so worded and spoken that the probationer is likely to feel it comes from a friend and that it will further what he believes are his best interests.

The attitudes described under examination will greatly aid the development of this friendly rapport. They encourage and permit the expression towards the probation officer of such friendliness as exists in the offender's make-up. So far as action by the probation officer is concerned, it is useful to be helpful - in any way that happens to be opportune - but it is important to avoid overdoing it. Gifts, too much friendliness and too much personal interference at this stage are to be avoided. They encourage an excessive demand for personal attention and when, as must happen, these excessive friendly attitudes stop resentment will be aroused and relapse or difficult behaviour follow. Nevertheless, the officer need not hesitate to show his interest in the probationer and his problems, nor need he fear to behave generally in a friendly manner.

Marked changes in the offender cannot be expected to occur rapidly. Much that is undesirable must therefore be tolerated for a while. This does not require either acceptance, e.g., of undesirable behaviour, or active acquiescence. The essential need is that the probation officer avoids active interference and criticism at this stage. He must not be impatient for reform.

Sometimes these initial stages are characterized by hostility or some other marked form of negative transference. The only remedy is to maintain the attitudes described, avoid revealing any irritation or other negative reaction, and wait for the hostility to lessen. It is fatal to try to argue or force the probationer out of such an attitude. When negative transferences are strong and persistent the offender is not suitable for therapy by a probation officer, though he may be suitable for the psychotherapist.

The existence of a favourable treatment situation will show itself by a friendly receptive attitude in the probationer. If a strong positive transference is established he will over-estimate the qualities of the officer who must be on guard against taking such flattering views too literally - even when they are correct. The offender holds them largely for subjective reasons and may change his views with disconcerting suddenness.

If further delinquency is anticipated during this stage, or in the earlier part of the next stage, it is necessary to protect the probationer by closer supervision (residential or otherwise) since it is too early to expect to control him by personal influence. While supervision must be adequate, it should not be excessive lest it adversely affects the personal relationship with the officer. Similarly it is important to gain the offender's co-operation in such a step and this is easier to do when he understands its purpose and when the need is anticipated on examination and the probation begins under such supervision.

When there is a change of probation officer this stage of the probationary process has to be repeated, since the rapport is not automatically transferred from one officer to another. Indeed, feelings of hositlity, mistrust and insecurity are often aroused by the change - at the worst the treatment may break down entirely. All possible warning of changes should be given to the offender, since this makes it easier to lessen or avoid such reactions, but some loss of time is inevitable while the new rapport is established. There are, therefore, strong reasons for ensuring continuity of treatment by the same officer throughout all the stages of the probationary process. Changes are never without problems once a strong transference situation has developed, and this must be borne in mind by both officers concerned. Sometimes a change helps. Thus a change of officer can be a useful manoevre when the early interviews have aroused antagonistic feeling to the interviewer as a person, e.g., because of a clash of personalities or because he has had to conduct his interviews or make his report in a way that has produced an unmanageable reaction to him on the part of the offender. When this happens the new officer should, if possible, be one who is likely by experience or personality to cope with the situation.

Some other aspects of the problem of continuity of treatment are mentioned under stage V.

The time required to establish a satisfacrory treatment situation varies from a few minutes to several months according to the personal make-up of the probationer.

Treatment proper

Strictly speaking, treatment begins with the first interview, but the main task of personal treatment begins when the treatment situation is established. The probation officer's methods have affinities with the psychological techniques of suggestion and persuasion but his therapy is essentially a process of re-education. The probationer at this stage has strong motives for co-operating in

treatment. He is ready to copy the officer's attitudes and follow his advice because he respects and likes him. He tends to identify himself with the officer as he believes him to be, and therefore tends to modify his standards and behaviour accordingly. If he is worried or in difficulties he will get reassurance from understanding talks with the officer. In such interviews it is usually wise to allow the offender to express his feelings fairly freely - a process that tends automatically to bring relief - before interrupting with advice or lengthy comment. Advice given then is far more likely to be accepted. His morale will be raised by encouragement. The officer should seek - but not too forcefully - to stimulate his self-confidence, facilitate and extend his interests and show satisfaction when progress is made. Favourable comment should be made in terms of the progress it is reasonable to demand of the particular person and not in terms of arbitrary standards. Morale is a factor in success and it is easily lowered by demanding too much.

On the emotional side the officer begins by deliberately exploiting the capacity of the offender to form a positive transference - a wholly subjective factor in the rapport. Once treatment is under way he must encourage greater objectivity with the purpose of enabling the offender to be as objective as possible in his attitude to him by the time probation ends. He can best promote this purpose by his behaviour towards the probationer. This must be consistent, reasonable, patient, friendly and helpful. Above all it must be objective and realistic - qualities which need not prevent the display of sympathy or discipline. He must try to avoid reacting unrealistically or with undue feeling to the difficulties and demands with which the offender will beset him. It must be remembered that many individuals are delinquent because of the way in which their personalities were affected by the errors and inconsistencies of those who brought them up. The re-educator must, therefore, avoid the mistakes of the original educators. His history-taking will have given him an idea of what these mistakes were. As pointed out under transference some stereotyped behaviour patterns may exist and it is vital that the officer treats their reappearance for what it is - a transient phase that is best dealt with by continuing with the pre-arranged treatment plan steadily and without apparent reaction. If such pattern has not been noted before, it may be necessary to modify the plan, but changes should be made with awareness of the irrational nature of the relationship between such repetitive situations and current circumstances. It is a bad mistake to keep changing the treatment plan to fit this kind of emergency and it is equivalent to conducting the treatment in a neurotic manner.

Some offenders tend to read into the probation officer motives and feelings that really belong to themselves. Others are adept at explaining their problems away in terms of reasons that, while plausible, are not the true cause. Still others tend to use the probation situation as a stage and act out their mental conflicts thereon, while casting the officer and others involved in their treatment in appropriate roles. This can cause much trouble and lead to lack of co-operation - and even quarrels - between those dealing with the offender. Considerable insight into such matters is needed, but merely to know that such mental mechanisms exist is helpful. The way to deal with them is to listen and avoid reacting as if the situation were objectively based. Any action or comment should be founded on an independently formed judgment about the real position.

It is as well to recall that when the offender behaves in ways like this he is largely unaware of their irrational nature though he is aware of being a nuisance and may even enjoy it. In general it is the pathological types that show such characteristics but quite normal people show some of them at times.

In general when such subjective and even neurotic attitudes are strong and persistent, the probation officer will need the help of the psychiatrist, since re-education alone will not suffice.

The positive transference situation tends to lead to an unduly dependent relationship in which the probationer has an irrational idea of what the officer should do for him and tolerate from him. If, in consequence, the officer behaves realistically, as he should do, the offender is bound to feel a disappointment and his reaction to this depends on his individual make-up. A common result is the display of undue annoyance in the form of anger, lack of co-operation, relapse, being a nuisance and such like. The general tendency is for the offender to try to manoeuvre the officer into acquiescing in his excessive demands on him.

During this stage practical help and advice can and should be given. Discipline, social training and a direct attack on the delinquent attitude can be brought into play. Social training implies the direct inculcation of good social standards and of a sense of social obligation. A habit of work can now be encouraged and ultimately demanded. Lapses can be regarded with increasing seriousness and with insistence on an effort to reform. An attempt can be made to harness conscience to the task of rehabilitation, but it is important to be cautious here since many delinquents show undesirable reactions to direct, or to too forceful stimulation of conscience.

Religion can help but there are difficulties in the religious approach. The delinquent is too often antagonized by it and religious standards and beliefs are frequently more effectively applied by the officer ensuring that they are implicit in the attitudes and standards he displays in other ways to the offender. The religious approach in general, is best used by those who are themselves sincerely religious, a facade of faith is useless. The officer who uses this method must be able to do so naturally and without self-consciousness. A priest who is really understanding about delinquents and probation can be a valuable helper. Many officers find this approach too difficult for their use, but it should be remembered that in the hands of those who can apply it, and for those who are receptive to it, religion is a most potent agent of reform.

Discipline is necessary but it should not be confused with punishment, which is not the best or even the proper method of the probation officer. He should aim at more constructive ways of ensuring control and discipline though his duty will at times lie in invoking the sanctions of the court.

In all these direct methods of personally influencing the offender, the officer must guard against subjective bias in himself. The more objective the relationship has become the fewer will be the complications attending their use. It is vital to be patient, to avoid using such methods as the history shows to have failed in the past, to avoid persisting unduly in a new method that fails repeatedly or evokes some difficult personal reaction in the offender.

Control and re-education are not just matters of discipline and orders. The officer will do well to copy the example of the attitude of a good father to his children. Such a one is kindly yet firm, a good example yet understanding of failure, encouraging yet neither too demanding nor too soft, and he will control by eliciting respect. If he must be stern he will be so without hostility and above all he will be consistent and not expect too much.

Termination of treatment

The essential need is for gradual weaning over a long period so that the probationer is not too abruptly deprived of support. This also gives a better opportunity for testing the stability of his rehabilitation. It fairly often happens that an offender ceases to offend while on probation because this is appropriate to his subjective relationship to the probation officer rather than because any basic delinquent tendency has been eradicated or because he has formed lasting, stable and socially permissible habits which can satisfy those needs in himself which were previously dealt with by delinquency. In consequence relapse will occur if the relationship is too abruptly terminated. Indeed a sudden termination unexpected by the probationer may upset things seriously even though he is free from these problems, especially if his delinquency is partly rooted in serious emotional disturbance in himself over parental deprivation in his formative years. Similarly when over-dependent individuals are nearing the end of probation it is important to ensure that they find a substitute for the probation officer and establish a relationship with him before probation ends. Or again if many people are co-operating in the treatment it is as well to avoid several of them deserting the probationer at the same time.

The post-probation period

The need of some probationers for after-care by the officer or others has been mentioned and it may be necessary for such care to continue for a very long time. If this necessitates a change of therapist, the new contact should be made well before the probation officer leaves the scene.

Inevitably some traces of the transference situation remain at the end of probation. This may cause the offender to visit or write to the officer and it is as well to respond in friendly though moderate fashion. But such transference residues have a more positive value. They imply that continued contact in the post-probation period can help to ensure freedom from offences either at times of crisis or in general. The simplest way of coping with this need is to write personal follow-up letters of a friendly kind at pre-arranged times. The knowledge that he is still in touch will keep many a doubtful case in hand, and will make him the more likely to return when difficulties arise, and before further offences occur.

Compulsion and authority

The effect on the personal relationship of legal compulsion and the authoritarian role of the probation officer shows individual variations. The general tendency is to increase the problems of negative transference and to stimulate the production of anti-therapeutic attitudes. This is frequently overridden by the other factors involved in the relationship but much skill is needed on occasion to develop a good therapeutic relationship under these conditions. Those offenders who tend to form negative transferences to authority, those who have little capacity for positive transference and those who have little subjective incentive for rehabilitation are the ones who must frequently cause difficulty here. There is little doubt that the attitude of the probation officer has some bearing and the officer who has the attitudes described above and is also genuinely free from anxiety about this situation, experiences the least difficulty.

The subjective problem in the officer

Both in his general management of cases, and, more particularly in dealing with the problems caused by the presence of these subjective factors in the offender, the probation officer will experience difficulties that arise from the fact that many of these same factors are also inevitably present in himself. On occasion they will make him unduly sensitive to some particular attitude in the offender and, e.g., avoidable crises or difficult interviews will occur. In such a situation he may become over-anxious or angry or show undue feeling in some other form or even be unduly inactive. Errors of judgment are then more likely and outright mistakes may be made. Similarly he may fail to cope with, or even perceive, those characteristics of the offender that are also present in himself, though unperceived by him to be there. He may read his own ideas and feelings into his probationer, or be unduly optimistic about him through sheer wishful thinking. Or again he may be over-critical of some trait in the offender which corresponds to one which he has difficulty in suppressing in himself or has dealt with in himself by unyielding opposition.

The commonest problems are those arising from counter-transference, identification with the offender and anxiety about failure.

(1) Counter-transference - i.e., the transference the officer forms to the probationer. This may not matter but when strong it may lead to errors of judgment and handling: at the worst it will disrupt the treatment altogether, or make its termination extremely difficult.

The officer will, of course, experience subjectively-based feelings towards the probationer as soon as he meets him, but if he is suitable by personality for his job this initial attitude will soon be modified in terms of objective observation. As the offender gradually discloses himself to the officer and exhibits his own transference feelings, however, the officer will experience a response in himself to the feelings, attitudes and so on to which the offender subjects him. This counter-transference response on the part of the officer may be positive or negative or both. It may be a general attitude or it may only reach significant strength over some of the many facets of the probationer's behaviour and feelings. Any of the kinds of problem described in the preceding paragraph may further complicate the picture.

Positive counter-transference tends to produce too close and too friendly a bond. In minor degree it may help because it makes it easier to put up with the offender's behaviour when that is a wise plan, but an objectively based belief that the task of rehabilitating the offender in question is worth while is a better motive for this. In major degree it is a serious handicap because it may cause the officer to be unduly blind to faults, to be over-optimistic, to spoil, and to be too friendly when befriending the offender. It may give rise to over-protection and over-anxiety for the probationer's welfare. Above all it causes real difficulty over weaning since the officer shares the anxieties of the offender over this stage with resultant mishandling, or increased risk of relapse and a tendency to do too much for the offender during the post-probation period.

Negative counter-transference is always a problem since it leads to lack of tolerance, unwillingness to understand and even real hostility. Treatment may be harsher than is necessary or wise and the chance of cure may be under-estimated. Things which could help the offender will be left undone or opposed and his co-operation will be impaired.

A mixed counter-transference tends to cause inconsistent handling and many crises.

Sometimes the opposite of such effects occurs because the officer is striving thereby to counteract his own feelings. In any event strong and unrecognized counter-transference tends to produce emotional entanglement with the offender and a serious loss of objectivity in treatment.

(2) A tendency in the officer to identify himself with the probationer and his problems. This usually causes undue tolerance, but the attempt to suppress it may cause harshness. Strain is inevitable over a period.

The proper selection and training of officers can do much to lessen the incidence of these subjective difficulties. Insight and intuitive flair help but subjectivity is inevitable and mistakes will occur. Within limits this may not matter. It is the repitition of error and the failure to recognize when things are wrong that is so serious. It is rare for one or two mistakes to ruin a treatment. The officer should regularly review in his own mind those probationers who are not responding or about whom he has strong feelings. A monthly or bi-monthly check is sufficient. If he fails to find an answer or cannot give effect to his answer he should consult colleagues. As a rule it is easier for someone unconnected with the case to see what is happening.

Similarly it is of use to think about the cases that do well - though less frequently - to see why so favourable a view is taken of them and why they are doing well. The officer should not attempt to psychoanalyze himself over this. What is needed is quite a superficial though critical appraisal of the situation. The group therapy type of case discussion described below is very helpful for this purpose.

Emotional stress in the probation officer

The personal treatment of offenders involves many sources of emotional strain for the officer e.g., the need to cut across many of his preconceptions and attitudes; the need to tolerate the offender's less pleasant attitudes; tolerating the transference manifestations and controlling his reaction to them; failure and relapse which are inevitable at times; overwork and the related lack of an adequate social life.

The amount of anxiety aroused and the way in which it affects him are determined largely by subjective factors in his own personality.

Whatever its cause, the existence of undue stress will produce mental tension which may appear as worry, depression, fatigue, anger and so on, which will either persist or appear frequently. Efficiency and judgment may be impaired and the new appearance of ineffectiveness, avoidable errors, bias or unduly strong feeling either in general or with a particular offender are signs that stress is present.

There are devices for reducing this problem. Anything which increases the officer's insight into his own feelings and attitudes will help. Personal analysis is the best means to this end but is impracticable for the vast majority. Temperamental suitability for the job is essential and selection systems should pay great regard to this. His superiors can help by being understanding. They should know the limitations of the officer's proper methods of treatment and understand the nature and habits of delinquents, so that, e.g., the officer need not anticipate criticism for inevitable relapse. Too often is the offender expected to reform too soon. Then either the offender or the probation officer may be blamed because a further offence displays the obvious fact that cure must take time. There are limits to toleration, but toleration must be extended where the best chance of rehabilitation requires a therapeutic règime in which further offences are a possibility before treatment can reach a curative stage. Those systems in which the probation officer has discretion over his attitude to a breach of the probation order are very advantageous here.

Intuitive understanding, maturity, good knowledge, experience and helpful colleagues all help to lessen emotional stress. Unfortunately there is no way of avoiding strain entirely.

It is useful to discuss such problems with an understanding colleague or with a psychiatrist. Where a particular offender causes undue stress, a change of probation officer may be the remedy though this will need close harmony between colleagues. All officers must be prepared to accept some strain-producing cases, though overloading with such cases is to be avoided.

Another way of reducing strain (and this is preventive also) is that case-work is supervised by a more experienced, highly-skilled officer or other suitable therapist, who must be well equipped temperamentally to stand strain since many of these stresses will be passed on to him from those he supervises, though he will escape the strain of direct contact with the offender.

A promising development is what might be called group therapy of the probation officer. Here a number of officers meet regularly under a leader, who should be knowledgeable about delinquents and their treatment. The group discuss their cases - especially those giving them difficulty - freely, and give expression to their own anxieties in handling them. Under suitable leadership this results in a considerable diminution of emotional stress and a gain in therapeutic skill and confidence. The ideal leader would be a group psychotherapist knowledgeable about delinquents and their treatment.

It is to be emphasized that the proper diagnosis of causes and subsequent planning of treatment and assessment of prognosis are valuable aids for the increase of confidence and the lessening of anxiety.

All this implies that the probation officer must remember that his relationships with his superiors, colleagues and co-operators are governed by those same factors that determine his relationship with the offender, though it is hoped that they will be characterized by greater objectivity.

PROBATION PERSONNEL

by Eileen Younghusband, M.B.E.[1/]

As the probation system has developed in different countries and over the course of years and as its essential processes have become clarified, it has become obvious that the success of the system is dependent upon personal relationship between the probationer and the probation officer. This has, as is natural, been more widely recognized in regard to children than to adults. Three main stages may be distinguished in the process, all of them operative in different European countries at the present day. The first stage is the suspension of sentence without supervision, the offender himself taking the responsibility for keeping himself out of further trouble without aid from the court. The second stage is supervision by any volunteers who may be available and adjudged by the court to be suitable; sometimes these are volunteers in the full sense, e.g. relatives, friends, neighbours or other persons of good will in the local community; or alternatively they may be volunteer or paid workers in private agencies. In the third stage salaried officials are appointed, either by voluntary agencies or by the State, who give their whole time to the work and who may be specially trained for it. In some countries, notably France and Sweden, the primary function of these salaried officers is to organize and supervise the work of volunteers, though they themselves on occasion undertake the responsibility for the more difficult cases. In the Netherlands certain voluntary societies for rehabilitation, as well as the Child Welfare Society Pro Juventute, are afforded semi-official status; the Ministry of Justice also appoints rehabilitation officers of whom there is at least one in every court district. A somewhat similar system exists in Finland where the State-aided Prisoners' Care Association employs full-time or part-time youth supervision officers. In Germany two experiments have been in operation since 1950, the one on the lines of the Swedish system of protective consultants; the other following the Anglo-American pattern of salaried probation officers attached to the courts and responsible for the supervision of individual offenders.[2/] Belgium has since 1951 endeavoured to appoint sufficient salaried officials (délégués permanents à la protection de l'enfance) for the actual supervision of young offenders; in the transition period a number of volunteers still work alongside the full-time trained officers. The introduction of probation for adults is being studied. As an experiment some 300 offenders in all have been placed under the supervision of social workers in the prison service (who in any event undertake a considerable amount of after-care of prisoners) or of selected volunteers.

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2/ M. Grünhut, Probation in Germany. Reprint from the Howard Journal, Vol. VIII, No. 3, 1952.

In the United Kingdom probation is a method of treatment existing in its own right, irrespective of the age of the offender. Binding over without supervision, changed by the Criminal Justice Act, 1948, to conditional discharge, is an alternative method of disposal quite distinct from probation. The latter requires the consent of the offender (if over the age of fourteen), the former does not. For certain historical reasons probation and personal supervision have always tended to be regarded as synonymous with each other. In the first pioneer experiments this was exercised by volunteers, then (from 1876) by employees of voluntary temperance and missionary societies connected with the courts, and then (from 1907) by salaried officers appointed by magistrates specifically for the purpose. The trend has been towards the elimination alike of the volunteer and of the part-time worker. Under the Criminal Justice Act, 1948, an offender may be put on probation only to a probation officer, i.e., no one else may exercise supervision.

It is necessary to consider the reasons which have led to the increasing, though by no means universal, emphasis on the full-time salaried and sometimes trained officer of the court or of an administrative department of the State or of a semi-official voluntary agency as against the use of the volunteer or of the suspended sentence without supervision. This development lies essentially in the realization that the offender himself may have an insufficient understanding of and control over his essential problems, both in his own personality and in his family and community relationships, to be able to refrain from committing further offences without a positive relationship with someone capable of affording him skilled help. A relationship in which the probation officer makes use of scientific knowledge and case-work skills, and in which there must be some willingness to co-operate on the part of the offender, "the satisfactory readjustment of the probationer to society, his family, and himself is the primary objective of probation treatment. This implies re-education and rehabilitation. It is a continuous process of attempting to understand the needs and limitations of the individual; of helping him to understand them; and of assisting him to direct or re-direct his impulses and actions in a way that is satisfying to himself and yet in accord with the demands of social living".3/ Furthermore, offences against the law are increasingly recognized as but one part of a more complex anti-social syndrome, and cure as something more thorough-going than an absence of further convictions - which may in any event merely denote greater skill in avoiding detection. Supervision thus aims at positive rather than negative goals in that its full purpose is to aid the offender to become a better member of a family and a better citizen than he was before he committed the offence. "Probationary supervision has developed from a relatively simple process in which probation officers 'advise, assist and befriend' probationers, to a skilled operation in which an extensive theoretical knowledge is brought to bear. This distinction between benevolent assistance and skilled treatment is of great practical significance. Without the necessary training and understanding 'there is a temptation to rely on temporary palliatives such as gifts of money, or on other measures which may keep the probationer out of mischief but will not prove a permanent cure' ... Above all, refined understanding and skill are required for the constructive utilization of the personal relationship between officer and offender."4/ This development of probationary

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3/ Quoted in Probation and Related Measures, United Nations publication E/CN.5/230, 1951, p.319.

4/ Ibid., p.267.

supervision is part of the wider development which has taken place in the whole field of social case work.

The offenders suitable for probationary supervision exclude on the one hand those for whom such measures as a monetary penalty or a suspended sentence or conditional discharge without supervision is likely to be an adequate sanction; and on the other hand those who require institutional care and control. The remaining group may be adjudged capable of adjustment in the outside world with the help of a probation officer and with or without the insertion of special conditions as to residence, etc., in the probation order. Thus the court in determining sentence should in fact be making both a diagnosis and a prognosis.

The social investigation which precedes sentence is an essential element in this. Such social investigations are in some countries undertaken by persons other than probation officers. In Norway the social investigation is carried out by voluntary welfare organizations which mainly rely on volunteers for the purpose. In Sweden the court designates "a suitable and willing person", very often young law school graduates, who are paid a fee for the purpose and who must make investigations the nature and scope of which are determined by royal decree. In France, the investigation is made by experienced social workers attached to the courts who are, however, distinct from the délégués permanents. In Belgium, the Netherlands and the United Kingdom the social investigation is undertaken by the same officers who exercise probationary supervision; the Netherlands is, however, proposing to reserve the duty of making the social investigation for special officers who will be government officials. This initial investigation is increasingly recognized as one of the most skilled and responsible duties of probation officers or other qualified social workers. It would not seem to be a suitable function for volunteer workers, however well-intentioned, for a probation system cannot succeed if persons incapable of response are placed under supervision; moreover, the social investigation may also provide information which is crucial for decisions as to alternative means of disposal. Even when there has been a social investigation a certain number of offenders will, as their subsequent progress indicates, be capable of keeping out of trouble with little or no skilled help, with the aid of such support as their relations and friends may give them. At the other end of the scale, a certain number of probationers will prove incapable of response and will either break down into delinquency or some other form of socially unacceptable behaviour. The middle group is composed of those who show themselves capable of improvement with the aid of probationary supervision. The important point is that the size of this group will be larger in relation to the failure group if well-trained and adequately supported probation officers are employed. Such officers can, because of their greater knowledge and aptitude, re-educate a larger proportion of offenders than can the volunteer or the untrained probation officer. Therefore the use of well-selected and trained workers means that more offenders can be reformed in their own social setting without recourse to institutional custody. There is thus a gain, both in human well-being and in financial cost.

In the United Kingdom probation officers also undertake matrimonial conciliation as an important part of their duties; they are beginning to be used to report to the judge on the welfare of the children in divorce proceedings; they are also increasingly being made responsible for the after-care of persons

discharged or licensed from approved schools, Borstals and prisons. After-care is an important supervisory function in a number of European countries - indeed it would be true to say that the value of supervision has sometimes been discovered through after-care of discharged prisoners rather than initially through probationary supervision. In short, the probation officers' functions in their widest sense are becoming "the application of modern scientific case work to individuals outside institutions".5/

If this be the trend of development, what is the place of the volunteer worker? The answer to this must distinguish between fact and opinion. So far as fact is concerned, the volunteer is actually the backbone of probationary supervision in every European country except Belgium, the United Kingdom and, to some extent, the Netherlands. The reasons for this may be divided into questions of expediency and questions of principle. From the point of view of practical expediency, there are extreme difficulties in organizing a professional service in countries with a widely-scattered population and poor transport facilities, as for example, Norway; whereas the volunteer may be available at any time in the near neighbourhood. Moreover, it is undoubtedly very much cheaper, so far as immediate cost is concerned, to run a probation system with volunteers rather than with paid workers. So far as principle is concerned, it is argued that a volunteer system is much more democratic; that the volunteer may come from the same milieu as the offender and accordingly be in a stronger position to influence him; and that the volunteer will be able to see the probationer and his family more frequently and take a greater personal interest in them than would a salaried official. On the other hand it is difficult to recruit a sufficient number of suitable volunteers, more especially in poor areas where the delinquency rate is usually highest; when not enough are available they tend to be given too heavy case loads in relation to the limited time they have to spare; they may not be available in a crisis because of other claims upon their time; it is more difficult for a court to require them to fulfil certain obligations; and, perhaps most important of all, they cannot be expected to undergo the same degree of training nor to acquire the same skill as the full-time professional officer. The volunteer system is probably at its best in countries like France and Sweden where there are full-time officials responsible for the recruitment, orientation and supervision of the volunteers and sometimes for stepping into the breach when no one else is available or when a situation is too difficult for a volunteer to handle. Even so, it would seem that modern developments in this field point to the use of volunteers at the circumference rather than as the mainstay of a probation service. Their function is a most valuable one but it is different from, not a substitute for, that of the trained professional.

Where volunteers are used for actual probationary supervision, their training is naturally of great importance. Probably the most valuable form of training is regular case discussions with experienced children's judges, and professional social workers. It is possible to teach more effectively in

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5/ U.S.A. National Commission on Law Observance and Enforcement, Report No. 9, Penal Institutions. Probation and Parole, 1931, p. 165.

relation to actual probationers and their problems than in any other way, but this implies the existence of supervisors with the necessary knowledge and teaching skills. Much can also be done by film showings, followed by discussion (several good films have now been made in different countries): by case discussions at child guidance clinics where these exist; by lectures; by one-day or weekend conferences; by making books, pamphlets, and periodicals easily available; by correspondence courses; by reunions in which the less experienced may learn from the more experienced; and by such devices as essay competitions. It is, of course, desirable that volunteers should join in conferences, lectures, etc. run for persons engaged in various other branches of the penal service. It is recognized that most volunteers are busy persons earning their living in other occupations, but they have a right to expect and a duty to make use of training and other assistance in the responsible work they perform. It is sometimes feared that to demand standards from volunteers will make them less ready to give their services. Though in fact the higher the standard set the greater the honour is being accepted. In some circumstances volunteers may be further encouraged by the award of badges or certificates for attendance at training courses.

At their best voluntary workers in the penal system are amongst the finest and most single-minded of citizens. If it is not possible to erect a skilled and universal service upon their shoulders, this does not mean that some magic formula will of necessity confer greater effectiveness upon full-time salaried officials. This will only happen as a result of good recruitment, selection and training; if salaries, working conditions (including size of case load), promotion prospects and pensions are such as to enable them to give good service and if these also compare favourably with those in similar occupations; and if continuous attempts are made to improve standards in all these respects.

In the last resort it is the personal qualities of probation officers which determine the success of the system. Effective selection methods are thus of primary importance. The clue to good selection is to have a wide field from which to select, to know clearly the qualities and qualifications required in relation to the job to be done, and to have evolved selection procedures calculated to give reasonably reliable information on these points. It is, of course, also necessary to check the value of selection methods by subsequent assessments of officers' performance.

In some countries the officers appointed may have undergone a considerable measure of pre-selection. Thus, in Sweden the protective consultants and assistants appointed to administer the service and supervise volunteers are already experienced in one form or another of welfare work, they have already achieved a substantial status in their profession and some of them are trained social workers. In Belgium, only social workers with the state diploma in social work, or a recognized equivalent may be appointed. In Scotland, a register of suitable persons is kept and selection is made from time to time from this register. In France, there are many more experienced women candidates seeking appointment than there are posts available. The most elaborate selection procedure used in any country exists in England and Wales where it is an integral part of the training scheme for probation officers. The Home Secretary appoints a Probation Advisory and Training Board composed of independent experts whose

function is to advise on every aspect of the probation service (except salaries which will be discussed later).6/ This Board is also responsible for advising on the operation of the national training scheme, with a secretariat provided by the Home Office. Under this system candidates are nationally recruited, selected and trained; they are then available for appointment by the local probation committees who are the actual employing bodies. The training scheme (to be described in more detail later) was originally started in 1930, but has undergone a number of modifications since then. Grants are now available to enable candidates to take full-time training extending, according to their needs, from a few months to two and a half years or longer in special cases; these grants cover maintenance, tuition fees, and travelling and other incidental expenses. As it is desired to recruit suitable men and women from the widest possible field, there are no set pre-entry qualifications, whether educational or otherwise. Because anyone from the age of 21 upwards may apply it is necessary to have elaborate selection methods and the ratio of applications to candidates accepted for training is very high - in 1951, 997 applications were received and 93 students commenced to train. The present selection procedure is partly based on a job analysis of probation and the qualifications required in a probation officer carried out by a psychologist on behalf of the Home Office in 1946. Every candidate fills in a comprehensive application form, and a carefully devised form is also used for getting testimonials from referees. If the candidate seems to merit further consideration, he is interviewed by a probation inspector and his qualities assessed on a rating sheet. He may be rejected at this stage, or earlier, but if he is passed for final interview he undergoes intelligence and group discussion tests and is interviewed by a selection panel composed of members of the Probation Advisory and Training Board, including a Home Office official as chairman. If this Panel recommends the candidate for training there is then a medical and, if thought necessary, a psychiatric examination before final acceptance. Students may also have their training terminated during the course if they are found to be unsuitable. It is claimed that this selection procedure has helped to raise the level of students and has eliminated a number of unsuitable people before acceptance. The system is largely designed to discover whether the candidate possesses certain defects which would make him unlikely to succeed as a probation officer. The job analysis to which reference has been made, listed the commonest personal causes of failure in unsuccessful probation officers: of these the chief (in order) were self-centredness, inflexibility, insufficient intelligence, emotional instability, over-dependence, and over-conscientiousness. The major positive criteria for success are, however expressed, usually agreed to be a sufficient level of intelligence and of emotional maturity, coupled with good health and a satisfactory standard of general and professional education.

Professional training of probation officers, as of other social workers, is necessary if they are to make adequate use of modern knowledge and be helped to develop the requisite skills. As the admirable United Nations Report on Probation and Related Measures puts it, "Probationary supervision has reached a stage of development at which it has come to be exceedingly uneconomical and impractical to expect probation officers to acquire the necessary knowledge and insight and skill for their profession through trial and error - the interests of efficiency demand the systematic accumulation and transmission of experience

6/ A similar but wider function is performed by the Netherlands Central Board for Rehabilitation which advises the Minister of Justice on general matters connected with rehabilitation.

and applied knowledge in order that new recruits to the service may be enabled to avail themselves to the maximum extent of existing knowledge and experience. The question is no longer whether or not special training for probation officers is essential, but rather what are the most appropriate substance and methods of such training. The scientific foundation of probation as a method for the treatment of offenders is to be found in the contemporary sciences of human behaviour, i.e., the social, psychological and biological sciences, and in the application of these sciences to the problems of criminal behaviour. The basic methods employed in probationary supervision are the methods of social case work. It is therefore essential that the training of probation officers should be based on general instruction in the behaviour sciences, in the application of these sciences to the problems of criminal behaviour, and in the principles and methods of social case work. In addition, the probation officer should have an adequate knowledge of community resources, and should be able to evaluate the probationer's needs in relation to such resources with a view to making appropriate referrals. Finally, he should be equipped with adequate knowledge of the law and court procedure relating to probation."7/ To this it may be added that the probation officer must learn to make a wise and disinterested use of his own personality so that what he has to offer by way of a constructive relationship may be of the fullest possible benefit to each probationer. He must also be actuated by a genuine love of and respect for his fellow men which is proof against shocks and disappointments, and by a non-condemnatory attitude towards them.

The principles of case work (which form the basis of probationary supervision) and of training for social work are now both well established. Case work as such is composed of certain skills and techniques and certain attitudes towards people. It is essentially the same in whatever setting it operates since it is based upon the study of people in their family and social relationships; their reactions to situations of stress and strain; the causes of typical behaviour problems; and the ways in which by the use of case work skills the individual may be helped to greater independence and more socially acceptable behaviour. This demands a professional education of sufficient length for the necessary knowledge to be assimilated and skills developed.

The most important studies for probation officers, as for other social workers, are social administration, that is, the structure and operation of social welfare provisions and the relevant legislation; the study of human behaviour, i.e. the biological and psycho-physical structure and functioning of the human being; the effect of family relationships and the social environment and accepted social standards on individual behaviour.

These general studies require supplementing for the probation student by an understanding of court procedure, the penal system, criminology and the psychology of delinquency. At a certain stage, general studies should begin to be integrated with field-work practice so that they are applied and brought to a focus in real life situations. At this point the student should begin to study case-work principles and methods and to acquire those case-work skills which will be the basis of his successful treatment of offenders. Such a course

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7/ pp. 267-68.

requires at least three years of full-time study and practice - but nothing less will suffice if we are to make good use of the knowledge we already possess in order to produce experts in social therapy able to play their part in a team of other experts serving the courts.

This should be followed by good supervision, i.e. careful planning of work and continued teaching, in the first job. This important element in good professional education is more honoured in the breach than in the observance, but we cannot hope to produce really well-qualified probation officers if we leave newly-trained students to sink or swim in their first job. Nor shall we continue to make the best use of probation officers throughout their career unless we afford them opportunities through the various forms of in-service training of further improving the standard of their work.

As things are at present, in-service training should occupy a very important place in plans for improving the efficiency of a probation service. Rightly understood, good in-service training does not mean isolated short courses which are not followed up, but well thought-out plans for continuous on-the-job training. Court staff meetings and case committees or case conferences may play an important part in this, particularly if they are carefully planned and outside speakers from connected agencies are invited from time to time to speak at them. Good supervision is, as has been said already in relation to volunteers, the best form of in-service training. Active steps should therefore be taken to improve the quality of supervision. Probation officers should be encouraged, if necessary financially, to attend appropriate university and other lecture courses. The evening courses given at the Institute for the Scientific Study of Delinquency (London) are a good example of such lectures. There may be a central library in the Ministry of Justice or elsewhere from which boxes of books etc., can be circulated to different courts. Professional associations may also play an important part by holding conferences, running study circles and publishing a periodical. The central employing body may also issue a bulletin from time to time, giving information about changes in the service and including articles on new developments and experiments and significant publications in delinquency and related fields. There should also be opportunities for study leave, both for study visits to other countries and also to take an appropriate training within the country. It should be expected of members of a probation service that they should continually improve their work and their knowledge and opportunities should be made available for them to do so.

Although this thorough basic training is far from achievement, there is an increasing concern about the need for training. In France the délégués permanents, some of whom already have a legal or social work training, must work for a probationary three months in a Children's Court and achieve a satisfactory standard before appointment. There are also annual two week courses in Paris for serving officers. In the Netherlands there is no full-time training for probation, and by no means all rehabilitation officers are trained social workers; the Society of Rehabilitation Institutions and Pro Juventute have, however, recently started to run two year part-time courses for serving officers who come together once a fortnight for a whole day for instruction in psychological, psychiatric, judicial, social case work and other subjects.8/

8/ G. Muller, Rehabilitation work in the Netherlands, 1950, p. 15.

The only systematic full-time training prior to appointment is that run by the Probation Advisory and Training Board for England and Wales. This consists of either the "long" course, i.e. a two year university social science certificate or diploma course (occasionally followed by a mental health course) or a three year degree course followed by a further 9 months' training in the theory and practice of probation. The "short" course consists of 9-12 months' theory and practice. In 1951, 34 students started the "long" course and 59 the "short" course. Of the latter, 37 already had a degree or university social science certificate or diploma or both a degree and a diploma before acceptance. Students who take the "long" course achieve a good university level in such subjects as social administration and legislation, psychology, social history, social philosophy, economics, the study of contemporary social problems and elementary statistics. They also have three to six months' full-time experience in various social agencies before taking the specific probation course. "Short" course students are given some experience in general social work, e.g., in family case-work agencies and settlements, besides substantial periods of training under the supervision of selected probation officers. The theory section of the course is substantially the same for both sets of students. It consists of lectures, discussion groups and individual tutorials on criminology; law, morals and society; social administration (for "short" course trainees only); biological and physiological aspects of sex; psychiatric and individual aspects of delinquency; case work; character formation (from a psychiatric standpoint); emotional development; matrimonial conciliation; and forms of institutional treatment and after-care of delinquents. The lectures are given by university teachers, psychiatrists, doctors, case workers, and those engaged in the direct administration of various services. During the theory course the students are resident in a hostel provided by a voluntary agency, the London Police Court Mission, which makes possible a much closer relationship between tutors and students and gives them more opportunities for discussion amongst themselves than would otherwise be possible. There are no formal examinations at the end of the course but students are assessed on all the reports on their work, both theoretical and practical. Those who do not reach the required standard have their training terminated or are asked to withdraw.

The standard of the theoretical teaching is high, and the whole course has undergone substantial improvements since it was first started twenty-two years ago. Its main educational defect probably is that the students do not have any teaching concurrently with their actual field work. This is understandable since they are scattered all over the country for their training with probation officers. But these probation officers vary both in the amount of time they have to give to student supervision and in their own skills in this respect. It may also be doubted whether they are sufficiently au fait with what is being taught in the theory side of the course to be able to relate this to the students' practical experience. Also, although all students have some probation training before taking the theory part of the course, they do not have an opportunity to return later for a further period of group discussion and teaching on the application of what they have already learned and attempted to put into practice. The Home Office is very well aware of the need for continuous improvement in the quality of student supervision. Probation inspectors give help and advice on this to probation officers selected to

supervise students, and more still is likely to be done in the future to develop supervisory skills. A start has been made with a course for a small group of experienced officers in the London area who have met one night a week for a year to discuss case-work skills and methods with a psychiatrist and a psychiatric social worker. This year an officer is attending a ten-months' full-time course in advanced case work at the Tavistock Clinic before taking up an appointment as an assistant principal probation officer in the London Probation Service.

Residential refresher courses of about ten days' duration are run each year, in co-operation with various university social science departments, for serving probation officers. The very strong professional association, the National Association of Probation Officers, does not itself undertake any training, but it holds a large annual conference and a number of regional branch conferences and meetings; it also publishes a bi-monthly journal, Probation. Apart from such activities there is not much systematic attempt at in-service training. Indeed the advanced provision for initial training is not matched by opportunities for in-service training and direct on-the-job skilled supervisory teaching which are so important to guide the untrained and continually to improve the performance of the trained. To a certain extent, of course, the actual hierarchy of the probation service in England and Wales provides some measure of staff supervision. There are 40 principal probation officers, 9 assistant and 5 deputy principals and 111 senior probation officers. There are also 10 Home Office probation inspectors who regularly visit probation officers all over the country to assess their work and to offer advice and assistance. These senior posts are not only necessary in the administration of a national service, but they also provide an incentive by way of promotion prospects. Of the total of 175 higher posts in England and Wales, 25 are held by women.

The number of full-time probation officers varies considerably from one country to another. In Sweden there are 13 protective consultants and 12 assistant protective consultants who are officers of the Prison Administration. Six of these are women. In the Netherlands there are about 110 full-time salaried rehabilitation officers employed by the various State-aided voluntary rehabilitation agencies and, in addition, a number employed by the Ministry of Justice. There are also full-time officers employed by Pro Juventute for work in the children's courts. Belgium has 60 délégués permanents. In France there are 113, of whom only 6 or 7 are men. In England and Wales there are 1,098 full-time men and women officers and 97 part-time ones.

Salaries and working conditions are, of course, important elements in the recruitment and maintenance of a satisfactory probation service. In most countries where probation officers are appointed by the State, e.g., Belgium, France and Sweden, they are civil servants and receive the salaries, increments and pensions appropriate to their position in the service. In Belgium the salaries, which are the same for men and women, are 63,600 francs to 106,320 francs a year. In France the salary range is 35,000 to 63,000 francs a month. This compares satisfactorily with those of teachers, but both salaries and promotion prospects are insufficient to attract men to the service. In those countries where salaried officers of voluntary organizations assist the courts with probationary supervision, the remuneration of the officer is fixed by the

organization concerned. In England and Wales the salaries of probation officers are agreed by the Joint Negotiating Committee for the Probation Service. Pensions are provided under the general local government superannuation scheme (officers contributing 6 per cent of their salaries). The current salary range, which is partly based on age at the time of entering the service, is £415 for men and £400 for women at the age of 23, rising to a maximum of £675 for men and £565 for women. Senior probation officers have £75 to £100 a year added to their salaries. Assistant, deputy and principal probation officers receive salaries which vary from £700 (men) or £575 (women) up to £1,375 (men) and £1,175 (women). So far as comparison with comparable employments is concerned, these salaries are more favourable (particularly in the upper ranges) than in several other forms of social work and compare well with the remainder. The prospects are less good for women than for men because this is the only form of social work in which the principle of equal pay for equal work does not operate. They compare favourably with teachers' salaries, which are also based upon unequal remuneration for equal responsibilities.

Probation officers in England and Wales are appointed and employed by local probation committees (except in the Metropolitan area where they are appointed by the Home Office). These committees are composed of magistrates serving in the courts of the area concerned. Both the local probation committees and the probation officers are subject to the national Probation Rules laid down by the Home Secretary and their work is inspected by Home Office inspectors. These Rules provide, inter alia, that the Home Secretary shall be notified of every appointment and that, after the probationary period of a year, his consent must be obtained to the confirmation of every probation officer's appointment, as well as to the appointment of senior and principal probation officers. The Rules specify in some detail the duties of probation officers including duties as to after-care, and the prescribed form in which records are to be kept. Suitable office accommodation, equipment and clerical help must be provided by the probation committee. Travelling and subsistence allowances of prescribed amounts must be paid, and, where it is necessary for the proper performance of an officer's duties, a car may be purchased and maintained for his use. Annual leave of not less than 24 or more than 36 working days must be given. Probation Committees must appoint a special sub-committee to investigate complaints against probation officers, who must also be given full rights to state their case. Every probation committee appoints a case committee to which each officer must report on his cases every three months; this committee is also responsible for exercising a general supervision over his work and records.

In Belgium the délégués permanents are civil servants appointed by the Ministry of Justice on the recommendation of the children's judge but responsible for their day-to-day work to the latter. They are provisionally appointed for one year and must pass an examination before their appointment is finally confirmed. Six monthly reports on their work must be submitted to the Ministry of Justice before their appointment is confirmed, and annual reports thereafter. The annual leave is a total of fifteen days. They do not have any clerical help and must type their own reports, do their own filing, etc. They receive reimbursement for travel by public vehicles in the course of their work but are not provided with cars or entitled to recover mileage expenses if they use their

own. There is a consultative committee of both sides to advise the Ministry of Justice which is responsible for advising on disciplinary measures and arbitration. In France also the délégués permanents are appointed by the Ministry of Justice, but responsible for their work to the children's court judges.

There is no common agreement as to the most suitable employing and supervisory body, and practice varies widely. Some think that probation officers should be the servants of the court and an integral part of its whole set-up. Others think it as incongruous for a probation service to be run by the courts as it would be for these to administer the prisons; those who hold this view consider that all forms of treatment for criminals should be the responsibility of an administrative rather than a judicial authority. In practice, as has been seen, probation officers may be appointed by a central department and directly responsible to it (Sweden); or be appointed by a central department, but responsible for their supervision of probationers to the court (Belgium and France); or appointed by a voluntary organization (subject to confirmation by the Ministry of Justice), but responsible in the same fashion to the court (the Netherlands); or appointed and employed by local probation committees within the framework of national Rules (England and Wales). These differences no doubt correspond to different administrative practices and points of view in different local situations which are in part the outcome of differing historical developments. In such circumstances there seems little justification for claiming any universal superiority for one principle over another.

It is certain that probation officers cannot do good work if their case loads are too heavy for adequate supervision and for time to be available in those crises which inevitably occur; this is particularly necessary with probationers requiring intensive case work, sometimes under the guidance of a psychiatrist. Where children are concerned, a probation officer may, moreover, be doing valuable work in exercising voluntary supervision over "pre-delinquent" children referred by various agencies, who may thus be saved the necessity for a court appearance. Where probation officers are responsible for social investigations they should not have to undertake so many of these that they have insufficient time for probationary supervision, as is said to be the case in, for example, the Netherlands. In Belgium it is assumed that a case load should not exceed 60, but there are insufficient salaried workers to achieve this standard. In Sweden 50 is considered desirable and 75 a maximum case load, with about 40 social investigations annually in addition. Actually, in that country, nearly one-third of all probationers are entrusted to workers employed by State-aided voluntary organizations and these officers may well have case loads of about 200. In the United Kingdom, it is thought that about 45 for a woman and 60 for a man should be the maximum case load for whole-time officers. The actual average case loads in England and Wales in 1951 were 40 for women and 60 for men (these figures refer to persons under supervision and do not include matrimonial work, kindred social work or social investigations). The case loads should be lower for senior probation officers who have supervisory and administrative duties in relation to other officers of the court. It is arguable that all these various figures are too high for effective case work.

To sum up the desirable conditions for the operation of a probation service which seem to have emerged or to be emerging as the result of experience in different European countries:

1. The success of probation depends upon personal supervision of the probationer, whether child or adult.

2. This probationary supervision is most effectively exercised by full-time trained and salaried officers with both a general training in social work and specific probation training, and who are able to use modern knowledge and case-work skills.

3. Where volunteers continue to be used for actual supervision they should be under the guidance of full-time trained workers.

4. Volunteers may in any event give valuable ancillary help to full-time officers.

5. The selection of appropriate cases for probation will largely depend upon adequate social investigations. These social investigations should be carried out by well-qualified social workers. It is preferable that this should be done by the same workers who will later exercise probationary supervision in some of the cases investigated.

6. Probation officers cannot fulfil their task sufficiently well by the light of experience only. They need knowledge, skills and the right attitude towards their work. This involves well-planned full-time training with interrelated theory and practice. They should also have continuous opportunities of in-service training and skilled supervision.

7. In order to staff a service with the right type of probation officer and to enable them to do satisfactory work it is necessary to select well for initial appointment, and to ensure good salaries, pensions and working conditions. It is also important that case loads shall not be too heavy for effective supervision, and that officers' time shall not be unduly occupied with social investigations.

8. These conditions of employment should preferably be nationally determined. There is value in an advisory board of outside experts to advise the Minister concerned. There should be proper machinery for the investigation of complaints against probation officers. Under certain conditions joint negotiating machinery may be desirable to determine salaries.

9. The actual employing body may differ according to local conditions, as well as the authority to whom the probation officer is responsible for the exercise of supervision. This is not a matter of fundamental importance, provided no confusion arises through divided control.

PROBATION AND RELATED MEASURES IN SPECIFIC COUNTRIES

Descriptive statements submitted to the Seminar
by the national delegations concerned

AUSTRIA[1/]

I. Legal provision and scope of Application

The term "Probation" will be taken in this statement to mean a method of dealing with specially selected offenders, consisting of the conditional suspension of punishment or of detention in a workhouse for offenders (corrective training or preventive detention), while at the same time the offender is placed under personal supervision and is given individual guidance or treatment.

In the administration of Austrian Criminal Law provision is made for probation as stated in:

1. the Law relating to Conditional Sentence, 1920 in cases where conditional suspension of the execution is pronounced (this is not a genuine conditional sentence).

2. the Law concerning the treatment of young offenders (Juvenile Law Act = Jugendgerichtsgesetz), 1928, (these are genuine conditional sentences), and

3. the Law concerning the workhouse for offenders (Arbeitshaús), 1932, in the case of the conditional suspension of detention in a workhouse.

Where a Court by which a person not under fourteen years of age is convicted of an offence, which would be punishable with imprisonment not exceeding five years, is of the opinion, that, having regard to the character of the offender, the threat of punishment (perhaps in connexion with related measures) seems more expedient than the execution of punishment, the defendant shall be convicted and sentenced but the Court may suspend the execution of the punishment, provided that the maximum punishment for this offence does not exceed five years' imprisonment.[2/] The payment of fines may not be suspended [3/] unless a fine is an additional penalty.

1/ Prepared by Dr. Max Horrow, Professor of Criminal Law, University of Graz.

2/ The Austrian Penal Code distinguishes imprisonment in four forms: Schwerer Kerker, Kerker, strenger Arrest, Arrest.

3/ Since the Penal Procedure Law Amendment, 1952 (BGBl 161/1952).

In spite of the fact that the law of the suspension of the execution of punishment does not explain the scope of it, the idea underlying the law is the social reorientation of the person convicted, who appears suitable for it. This social correction is being promoted mainly by the prevention of any contact with prison; that is especially important in the case of short terms of imprisonment. This is clearly expressed by the limitation of the power of the Court to suspend conditionally the execution to sentences of not more than five years' imprisonment.

It is worthy of notice that 70 per cent of crimes (Verbrechen) and 97 per cent of minor offences (Vergehen) are punished with imprisonment of not more than six months. Less than 1/2 (half) per cent of petty offences (Ubertretungen) are punished with imprisonment of from 3 to 6 months. It is now evident that it is mainly the execution of short prison terms which is suspended both in favour of young persons between fourteen and eighteen years of age, and of those above eighteen years of age.

Where a Juvenile Court is of the opinion that, in the interests of the community (general prevention) and of the young offender between 14 and 18 years of age (individual prevention), it is expedient to dispense with the penalty or, instead of sentencing, to take other measures, the Court may suspend the sentence conditionally. The object is social readjustment of the offender while remaining at liberty.

The Court may conditionally suspend committal to the workhouse, which may be ordered in addition to the punishment, if it is satisfied that the mere threat of committal (perhaps in connexion with related measures) would be sufficient to induce the person convicted to be diligent and honest.

II. The functioning of the Court and the selective process

In all the cases referred to at I above, it is the Court which grants the suspension.

1. The Court may in the case of "non-genuine" conditional sentences order the conditional suspension of the punishment awarded, and a probation period of not less than one and not more than three years. The Court may make a probation order, that is to say, an order requiring the (convicted and) sentenced person to fulfil such requirements as the Court considers necessary for securing good conduct. The Court gives to the offender a copy of the main contents of the sentence including the requirements as to his conduct and any acts which might lead to the revocation of the suspension. The Court may conditionally suspend the execution of punishment not only of young offenders (between 14 and 18 years of age) and first offenders, but also of offenders above eighteen years of age and of recidivists, provided it has investigated the character of the offender. The Court is obliged to consider the nature of the offence and the degree of his guilt (as an expression of the character) having regard to the age of the offender, his former life, character and whether he has made such compensation as is in his power.

2. The Juvenile Court, before which a young person (between 14 and 18 years of age at the time of judgment) is convicted of an offence which is punishable by fine or imprisonment, may conditionally suspend the sentence (and the execution of punishment) for a period of probation to be specified by the Court of not less than one year nor more than five years. The Court may make a probation order with such requirements as will prevent the convicted young offender from becoming a recidivist. After the expiry of the probation period the Juvenile Court will declare the sentence to be set aside, but only:

(1) if the offender has not been punished within three months of the expiry of the probation period, or

(2) after completion of any other criminal proceeding (which was pending against the person convicted), or

(3) if the person convicted is unable to appear before a Court in the time mentioned above (three months).

On the motion of the Public Prosecutor, the Juvenile Court shall determine the punishment and shall order the execution of punishment if it becomes apparent during the probation period that a correction by other measures is not feasible.

The Court shall only suspend the sentence if the defendant is under 18 at the time of judgment and his conduct does not make suspension undesirable on grounds of general prevention (deterrence) or of individual prevention. Suitable selection is guaranteed by the Law which requires the appointment of a Juvenile Court judge who has a special interest in pedagogy, and who, if possible, is trained in psychology, psychiatry or pedagogy.

3. The Court may also conditionally suspend committal to the workhouse and order a probation period of not less than one or more than three years (for recidivists not more than five years). There are no special rules for the selection. A decisive factor in the decision to postpone the committal to a workhouse is the likelihood of correction in both cases, tramps or prostitutes on the one hand and recidivists on the other.

III. Probationary supervision and treatment

Where a Court conditionally sentences a person it may make a probation order requiring the convicted person to be under supervision for the probation period, but only on condition that the Court, having regard to the age, character and the circumstances (of the life) of the convicted person, is of the opinion that it is expedient to place the offender under supervision. The supervisor of the convicted shall, according to the respective requirements of the Court, visit the probationer at suitable intervals of time at his lodging, workroom or school and so on, and supervise his conduct and his associates as discreetly as possible.

The supervisor shall acquaint the probationer with his duties and ensure that the probationer fulfils his duties and behaves well. The supervisor shall try to keep the probationer from bad company and from other temptations; further, the supervisor shall help the probationer, and find suitable employment for him if necessary. The supervisor shall fulfil his duties carefully, saving the honour of the convicted person as far as possible, avoiding any action which may arouse the suspicion of outsiders or may cause others to get knowledge of the conviction.

IV. Personnel

Probation officers may be male or female, but they must be Austrian citizens of thirty years of age and over, who are, according to their preparatory training, experience, and knowledge of local circumstances, fit to hold the office of supervisor. Further, it is desirable for them to have knowledge in education, social welfare, psychotherapy and be a member of the same religious denomination as the probationer.

V. Organization and administration of the service

The Court may appoint as supervisors:

(a) representatives of a voluntary social welfare organization and if such are not available

(b) probation officers (Schutzaufsichtsbeamte).

(a) The Court must appoint the voluntary workers from the lists of juvenile court assistants (Jugendgerichtshilfe) or the lists of protective supervision officers (Schutzaufsichtsliste) which detail those institutions and persons who are fit and ready to undertake social duties connected with the Juvenile Courts or to supervise conditionally sentenced offenders.

The competent Courts shall - for the purpose of ascertaining institutions and persons who may be fit and ready to supervise the probationers - consider those persons, officers, institutions and societies in their jurisdiction who are concerned with the care of orphans, and children and with the care of provisionally released convicted persons and select the supervisor from one of the following panels:

(1) The panel of "Jugendgerichtshilfe" comprising officers for the care of Children and Young persons, also corporations, societies and other persons, who are ready to act as Juvenile Court assistants.

(2) Panel of supervising officers and others who are suitable and ready to supervise conditionally convicted probationers.

The Court may also appoint for the supervision of probationers, men and women, who are not named in a panel but are fit and ready to do these duties.

The supervision of conditionally sentenced young persons (between 14 and 18 years of age) is the responsibility of "Jugendgerichtshilfe". Conditionally sentenced adults (over 18 years of age) are placed under the supervision of persons or institutions which are included in the "protective supervision" lists ("Schutzaufsichtsliste").

(b) The Probation Officer shall be selected, when necessary, by the authorities responsible for the security of the Austrian State (staatliche Sicherheitsbehörden) and named in the "Schutzaufsichtsliste". The above-mentioned security authorities shall, before the selection of the probation officers, ascertain from the Court in whose panel the probation officers are listed where and how many probation officers probably will be necessary, also whether the selected person is qualified for the service of a probation officer.

VI. Assessment of results

The Court may, in case of a conditional sentence, issue an order for probation but it need not. Only in the case of a juvenile conditionally released from prison is it compulsory to make an order for supervision. Up to now we have in Austria figures covering only conditional sentences and none in regard to supervision and the results thereof. Such statistics were only begun in 1950 so that no comparison is possible. Since the Courts have been empowered to suspend sentences to "Kerker" (corresponding approximately to penal servitude) following the Crime Procedure Amendment Act, 1952, and the attached statistics cover the years 1948-1950, only sentences of imprisonment in the form of "Arrest" can be used for comparison. An assessment of results is thus not available.

STATISTICS OF PROBATION CASES

(Young persons between fourteen and eighteen years of age)

1. Juvenile Court, Graz

	Numbers			Percentages		
	1948	1949	1950	1948	1949	1950
Conditional sentences	116	157	121			
Number revoked	17	31	22	14.655	19.745	18.181
Conditional suspension of the punishment	119	112	64			
Number revoked	27	24	13	22.689	21.428	20.312

2. Court for petty offences

	Numbers			Percentages		
	1948	1949	1950	1948	1949	1950
Conditional sentences	59	24	36			
Number revoked	3	5	2	5.084	20.833	5.555

BELGIUM

I. Legal provisions in force (1952)

In practice, the Belgian penal code of 1867, which was inspired by the classical theory of crime and punishment puts only two sorts of penalty at the Court's disposal: imprisonment or fine.

The important law of 31 May 1888 on conditional release - known as the "Loi Lejeune" after the Minister of Justice who promoted it - wrought a great improvement in the penal system by empowering courts to pronounce a suspended sentence. If the term of imprisonment imposed did not exceed six months and the offender had no previous conviction for a crime or misdemeanour ("crime ou délit") the court could decide to suspend execution of the sentence for a fixed period not exceeding five years. The penalty was considered void if the offender incurred no further punishment for crime or misdemeanour during that time: otherwise the original and subsequent sentences were carried out consecutively.

The scope of these provisions was considerably enlarged by the Law of 14 November 1947, which allows the suspension of sentences of imprisonment of up to two years to be granted on the same conditions if the offender has not previously been punished for a serious offence ("peine criminelle") or served a term of imprisonment exceeding three months.

II. Experiments with probation in Belgium

Because "sursis" in its simplest form is only effective for non-habitual offenders and those capable of rehabilitating themselves by their own efforts, attempts have been made to devise a system which would guarantee effective help to the offender who is anxious to reform but unable to surmount unaided the difficulties which led him to his first breach of the law. It is natural therefore that attention should have been focused on the probation system.

A Government Bill instituting a probation system was introduced in 1948 but lapsed owing to a dissolution of Parliament. The preliminary draft of a new and revised Bill broadly similar to that of 1948 has just been prepared and an outline of this draft will be given in the present statement. It may be said at once that following a common Belgian practice the system which the legislature has been asked to consider has already been tested officially. Since 1946 certain public prosecutors ("parquets") have made an experimental use of probation within the limits of their power to determine whether proceedings shall be instituted: this may appropriately be referred to here as well as similar experiments by the Prisons Administration.

A. Experimental use of probation by the "parquets"

(1) Scope

Probation is applicable, before judgment is delivered, to delinquents whose guilt is not in doubt although it has yet to be judicially established, and who fulfil the conditions which would have entitled them to the benefit of "sursis" if a penalty had been imposed (penalty for the offence not exceeding two years' imprisonment and absence of a previous sentence exceeding three months).

(2) Method of selection

Compliance with these conditions does not automatically entitle offenders to the benefit of probation. Those whose offence is an outrage to society, and whose continued liberty would be out of the question are excluded.

If the Procureur du Roi is of the opinion that probation might be successful he orders social enquiries to be made. The social report is attached to the criminal record and their joint consideration guides the Procureur du Roi in deciding whether probation is appropriate and what requirements should be attached.

(3) Supervision and treatment of probationers

If it is proposed to place an offender on probation, he is asked to signify his agreement to this course and to the requirements with which he will have to comply. The Public Prosecutor warns him that he reserves the right to end the probation without reference to the offender or right of appeal, and that the case will then proceed to judgment in the normal way.

The Procureur du Roi selects the person responsible for supervision and puts him in touch with the offender. There is no element of police control in the relationship and the purpose of the supervision is to assist and not to repress. The supervisor reports regularly to a care organization which keeps the Procureur du Roi informed.

If the offender is of good behaviour and appears reformed, the proceedings are allowed to lapse at the end of the prescriptive period of three years. In case of doubt the period of prescription is suspended so as to prolong supervision for three years more.

(4) Personnel and organization of the probation services

As a general rule the social enquiries which precede the grant of probation are carried out by the Central Social Service, an organization attached to the Ministry of Justice. Supervision is entrusted either to voluntary organizations such as the "Comités de Patronage" and the "Offices de Réadaption Sociale" or to private individuals.

(5) Results

The initial results are very encouraging. There have only been six failures in a hundred cases. Two of these resulted from new offences and four from breach of requirements.

B. Experiment with probation by the Prisons Administration

The branches of the Department of Justice responsible for conditional release and the grant of pardons form part of the Prisons Administration. If an offender appeals for clemency before his punishment is executed, the Prisons Administration may resort to probation when the case comes before it. This step may only be taken after conviction whereas the "parquets" can use probation before. The conditions governing the Prisons Administration's use of probation are broadly those already mentioned for probation before judgment.

A grant of clemency may take the form of suspension of the execution of punishment subject to the observance of certain conditions. If the offender is of good behaviour during the period of probation and gives proof of having reformed, the penalty is rescinded by the issue of a pardon. Otherwise the penalty is enforced. From the time this experiment was begun in 1945 until 31 December 1951, there had been only 14 revocations in 312 cases.

III. Outline of the draft Probation Bill (1952)

(1) Scope

Probation may be applied after judgment to an offender sentenced to one or more terms of imprisonment for misdemeanour, provided he has no criminal record. The measure will be imposed by the court which convicted the offender and it will give reasons for its decision, fix a period of probation varying from one to five years, and explain the general conditions of the order. If the order is not revoked during the stipulated period the sentence will be treated as void. Otherwise the penalty will be exacted.

(2) Court procedure and method of selection

The Public Prosecutor's Department, the "juge d'instruction" and the courts responsible for both the preliminary and final hearings will be empowered, in order to decide whether an offender is likely to benefit from probation, to make enquiries with his consent into his behaviour, environment, associates, way of life and similar matters. If necessary a physical and mental examination of the offender may be ordered, and in such a case the results of the personal examination and social enquiries will be co-ordinated by a doctor who has specialized in the study of human behaviour and who, from the conclusions he draws, will make recommendations for appropriate action. If a personal examination is not considered necessary, the recommendations will be made by the person responsible for the social enquiries.

It will be for the court which delivers judgment, having due regard to the results of the preliminary enquiries, to decide whether probation is appropriate and what conditions should apply.

(3) Supervision and treatment of probationers

A Probation Commission, attached to the court in each provincial capital, will designate the probation officer responsible for supervising and assisting the probationer. Whenever the probation officer deems it expedient, and at least every three months, he will report to the Commission, which will be competent to particularize and amend the requirements of the court. The probationer will be entitled to apprise the court if he considers the Commission has exceeded its powers.

If the conduct of the probationer is excellent and he appears to be reformed the Commission will be entitled to suspend all or any of the conditions imposed. On the other hand, if the probationer's conduct leaves much to be desired, or he does not observe the court's requirements, the Commission will report to the Public Prosecutor's Department and the court which made the probation order will decide whether fresh conditions should be imposed or whether the order should be revoked. The usual right of appeal will lie against the court's decision.

A conviction for crime during the period of probation will entail the loss of all right to suspension of punishment for the original offence, while if there is a conviction for a lesser offence it will fall to the convicting court to consider whether to revoke the probation order or to add further conditions to it. Where an order is revoked the original and subsequent sentences will be served consecutively.

(4) Personnel

A Royal administrative Decree will define the functions and conditions of service of probation officers. The explanatory memorandum accompanying the new Bill insists that these officers should have had a sound training in social work and criminology. Their powers will be such as to make it possible for them to be an influence for good upon their clients. The officer responsible for the preliminary enquiries will not necessarily be the officer responsible for supervision.

(5) Organization and administration of the probation service

Alongside the court, which will be responsible for making probation orders and, in the last resort, rescinding them, will be the Probation Commission, the agency responsible for the execution of the orders. A Commission is provided for each province. Attached, as has been said, to the court in every provincial capital, these Commissions will consist of a presiding magistrate designated by the First President of the Court of Appeal and three members designated by the Minister of Justice. These three members will be a barrister, a doctor with psychiatric training, and a civil servant.

Provision is made for substitute members as well as for a Secretary. The Procureur du Roi will attend meetings and his advice will be available. The territorial jurisdiction and the functions of the Commissions will be defined by a Royal administrative Decree.

DENMARK

1. Legal provisions and scope of application

(a) Probation and related measures

In Denmark probation was introduced by a statute of 1905. The probation system was adopted as a suspension of the execution of sentence, the so-called Continental system.1/ Since 1905 the legal provisions on probation have only once been changed, by the new Penal Code of 1930 which came into force in 1933.

The principal concept of the code is not "probation", but "conditional sentence" ("bedingte Verurteilung", "condamnation conditionnelle"), i.e., the decision of a court that a fixed penalty shall not be executed if during a certain period - with or without supervision - the offender is not convicted of a new offence; otherwise the original offence and the new one are, as a rule, dealt with together in one sentence.

Except for a few comments on related measures, the present statement will be confined to this method of treatment.

In existing Danish penal policy there are several methods of dealing with offenders similar to the suspension of the execution of sentence.

First of all the public prosecutor has a discretionary power to abstain from prosecution in consideration of the trivial nature of the offence or the advantages to be gained by sparing the offender criminal proceedings. Numerous cases are dealt with in this way. If conditions are prescribed, e.g., that no offence be committed during a certain period, such decision is very much like a probation order by the court, especially where the court is informed of or confirms the decision of the prosecutor.

Special provisions have been laid down for the application of this principle to youthful offenders between 15 and 18 (the youngest group of persons subject to criminal responsibility). In consequence of these provisions suspended sentences are hardly ever given in this age group. It is an obligatory condition that the offender should be committed to the care of the child welfare authorities or to other public care.

Admonition as a criminal sanction is only applied in minor cases of wrong-doing.

1/ Legislative provision for the conditional suspension of the execution of sentence was made in Norway in 1894 and in Sweden in 1906.

Conditional release (parole) may be granted after the elapse of two-thirds of the sentence (at least nine months). The parolee is placed under supervision

The Penal Code contains special provisions concerning the treatment of irresponsible persons. Some of the relevant sanctions are rather lenient and very much like probationary conditions (e.g. supervision, surety, residential obligations) - others involve the deprivation of liberty.

Finally, the royal right of granting pardon should be mentioned. Every punishment, in the technical sense of the word, or part of it, is remissible by the King. A pardon may be given conditionally, frequently subject to supervision.

(b) Scope of application of the conditional sentence

Suspension of punishment may be granted by any ordinary criminal court if the general statutory conditions for the measure are fulfilled.

The application of the conditional sentence is not limited with respect to the characteristics of the offender: age, previous record, etc. Apart from juvenile delinquents between 15 and 18 years of age (see above), probation has a wide application to offenders of all age groups - especially to the younger age groups. It is left to the court to decide whether probation is inappropriate by reason of a previous conviction. Of all persons granted probation for offences against the Penal Code in 1949, 13 per cent had previously been convicted.

The suspension of sentence is not excluded in respect of any offence, unless implied by the gravity of the penalty imposed. In Denmark two kinds of punitive detention are applied: simple detention and imprisonment. The execution of sentences to simple detention for more than two years or to imprisonment for more than one year cannot be suspended. This limitation is without any practical importance in respect of simple detention which generally does not exceed three months. In the case of imprisonment the maximum of one year may be decisive, but a special rule of the Penal Code provides for the suspension of sentences to imprisonment for more than one year if the offender (though not mentally abnormal) has acted under the influence of extreme excitement, etc.

Only a very small number of sentences to fines are made conditional. Apart from fining, simple detention and imprisonment, no other form of penal treatment can be suspended under Danish criminal law.

2. The functioning of the court and the selective process

Unlike the English, the Norwegian, the Swedish, and the Finnish laws on probation, the Danish Penal Code does not mention the considerations on the basis of which the suspension of punishment is applied. A provision of this kind was contained in the first Danish statute, but is now considered unnecessary. In Denmark, as is probably the case in most other countries, probation orders are generally motivated by a few considerations of outstanding importance: youth,

health, character, antecedents, motives and nature of the offence, obvious risk of bad effects from imprisonment, etc. The execution of sentence may often be considered necessary from the point of view of general deterrence, e.g., in cases against intoxicated motor drivers.

According to the Penal Code a special pre-sentence investigation must normally be made in all cases where the possibility of a conditional sentence is under consideration. (In practice, however, the information gathered by the police will often be considered sufficient.) The purpose of the investigation is to inform the court of the defendant's personality, his behaviour at home, in school and at work, his physical and mental condition and other circumstances likely to influence the decision of the court. The procedure to be followed by investigators is laid down in official instructions. Pre-sentence investigations are frequently made by the persons who act as supervisors. It is generally recognized that a carefully executed investigation is of considerable importance in the application of the probation system.

Supervision and other additional conditions are not subject to the consent of the offender.

3. Probationary supervision and treatment

The probation period is the period during which new offences may cause the execution of the original penalty. It is fixed by the court within a statutory minimum and maximum (2 and 5 years; according to the statute of 1905 the probation period was in all cases 5 years). In practice a period of 3 years is fixed in about 50 per cent of all cases and a period of 5 years in about 35 per cent of the total number.

Probationary supervision added to the conditional sentence need not necessarily be prescribed for the whole of this period, but may be limited to a shorter period. In practice this is often the case.

Apart from the fundamental condition of probation - that no offence be committed during a certain period - the Danish Penal Code does not provide for the imposition of mandatory terms. According to the law a supervision order must be made unless it is considered inexpedient; similarly, other additional terms are imposed at the discretion of the court. Such terms are not frequently applied. Among the most common may be noted: residential restrictions, obligation to find or keep work, payment of damages, abstention from intoxicating liquor. In recent years a special method of treating inebriates, "treatment with antabus", has been introduced. It is sometimes stated in the sentence that the probationer is bound to comply with the requirements of the supervisor.

There are a few probation homes for juvenile delinquents, but it must be stated that conditions involving loss of liberty are rarely applied.

Between 40 and 50 per cent of all conditional sentences include a supervision order. As a general rule the supervisor is in touch with the probationer once a week during the first month, afterwards less frequently.

However, the frequency and nature of contact depends upon the circumstances of each particular case, and the supervisor should form a personal opinion as to the likelihood of his exerting some influence on the probationer and the means to be chosen.

The supervisor reports to his organization on the behaviour of the offender. (Between the court and the supervisor of his organization there is no immediate contact.) Where special terms have been added to supervision, the supervisor has to ensure, as far as possible, that the conditions are carried out.

If the offender commits another offence for which he is brought before the court before the expiration of the probation period, it is the general rule under the Penal Code that a penalty in respect of both the original and the new offence must be fixed and executed. If the new offence is not, however, committed intentionally, but only by negligence, or if it is punished only by a fine or by simple detention, such a penalty may be executed separately, the probation order being maintained with respect to the original offence. And under special circumstances both offences may be included in one probation order without any execution of punishment.

If special terms are violated, the penalty fixed by the court may, under the law, be executed immediately. But this course is rarely taken. The probationer may instead be brought before the court to be warned or to have new conditions imposed upon him, or the supervision organization itself may make another effort.

The Penal Code has a special provision relating to the situation where the probationer is charged with an offence committed prior to the suspension of sentence. In such cases the original sentence should have taken this offence into account had it then been detected; the court now reconsiders the matter and decides whether or not the execution of the penalty shall continue to be suspended.

If, at the expiration of the probation period, no further offence has been committed, the probationer is automatically discharged from probation. No formal declaration of the court or any other authority is needed.

4-5. Personnel; organization and administration of the service

Probation supervision is directed by the Danish Welfare Association, which is an organization comprising all supervision services concerned with probation, parole, conditional pardon, conditional suspension of prosecution, etc. The association (with headquarters in Copenhagen) is a private organization receiving financial aid from the State. The supervision organization and functions are based on a royal order of 1933.

Pre-sentence investigation is closely connected with the supervision agency.

Both full-time and part-time assistants (officials and private persons) act under the Association. It has always been recognized that the efficiency of

supervision is principally dependent on the personality of the supervisor, and in Denmark some difficulty has been experienced in finding a sufficient number of qualified persons. Some of the investigators are, however, trained social workers. So far it has not been possible to make provision for the special training of probation supervisors and investigators, but after an extensive reorganization of the Welfare Association training and instruction activities have now been started.

6. Assessment of results

The role of the suspension of sentence in Denmark is indicated by the fact, that of all persons convicted of offences against the Penal Code in 1948 and 1949, about 30 per cent had the execution of their sentences suspended, with or without supervision.

Follow-up studies of discharged probationers have not been made in Denmark. Nor have official statistics, showing the number of recidivists in the years after the enactment of the Penal Code, been published as yet. Consequently, the effect of probation as compared with that of other penal sanctions cannot at present be stated with any degree of certainty, but it is a common conviction that the probation system is a most valuable factor in Danish penal policy, although much progress can still be made. At present a reform of the legal provisions on probation is under consideration by the Criminal Code Commission.

FINLAND

Statutory provision for the conditional sentence, applicable to both juveniles and adults, was enacted in 1918.1/ The Act, still valid, is based on the Franco - Belgian system, thus providing for the conditional suspension of the execution of sentences of fines and imprisonment.

Probation, in the strict sense of the term, was introduced in Finland by the Juvenile Delinquents Act of 1940.2/ It takes the form of a measure supplementary to the above-mentioned conditional sentence. The provisions of this Act should accordingly be applied in conjunction with the Act of 1918 with respect to young offenders.

Scope of application

The scope of the application of the conditional sentence is restricted by the severity of the sentence the execution of which is to be suspended, and the criminal record of the offender.

(a) Restrictions in terms of the severity of the sentence the execution of which is to be suspended:

Only sentences of fines and imprisonment (penal servitude and imprisonment) not exceeding one year, are subject to conditional suspension (Act of 1918, s.1). The conditional suspension of the execution of sentences to fines is applied to the fine itself, and not to the conversion penalty of imprisonment in case of non-payment.

There are no restrictions in terms of the legal sanction for the offence, nor in terms of the nature of the offence, with one exception, namely, the restriction which applies to the special category of offences, which are committed by public servants in the discharge of their official duties.

(b) Restrictions in terms of criminal record:

The restrictions relate to both previous sentences received and served, and the time that has elapsed since the previous sentence or term of imprisonment. Offenders who during five years preceding the commission of the present offence have been sentenced either to

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1/ Act of 20 June 1918.

2/ Act of 31 May 1940; put into effect on 1 January 1943. According to this Act, a "juvenile" is a person who on commission of an offence had reached the age of 15, but not 21 years.

penal servitude or to imprisonment exceeding six months or who, during the time mentioned, have served such a sentence for an offence committed before this time, are ineligible for the conditional suspension of punishment (s.2).

As regards juveniles, the application of the conditional sentence (with or without probationary supervision) is limited only by the restrictions in terms of the severity of the sentence the execution of which is to be suspended (Juvenile Delinquents Act, s.7).

The duration and conditions of the suspension of punishment, or of probation

The maximum and minimum duration of the period of suspension is determined by law (Act of 1918, s.1), the maximum being five, the minimum two years. Within these limits, the court is authorized to fix the term it deems proper in each case. The period most frequently applied is three years, irrespective of whether or not probationary supervision is provided.

When the conditional sentence is supplemented by supervision, the duration of the supervision is, as a rule, equal to the period of suspension. The Juvenile Delinquents Act, however, provides for administrative discretion with respect to the duration of the actual probationary supervision. According to s.12 of the Act, the Ministry of Justice, the body responsible for the organization and control of probationary supervision, may, on the suggestion of the supervisor, terminate supervision after a minimum period of six months if the conditionally sentenced young offender has behaved satisfactorily and continued supervision is not regarded as necessary.

The suspension of the execution of sentence is subject to the general conditions that the offender shall not, during the period of suspension, commit any further offence and that he shall lead an orderly and respectable life and abstain from the use of intoxicants. In addition to these general conditions relating to the conduct of the offender, the court may require the offender to make restitution for damage and loss caused by his offence if the court considers the offender capable of carrying out such an order.

In addition to these statutory requirements in respect of the contents of the conditions of conditional suspension of punishment (with or without probationary supervision), the Juvenile Delinquents Act provides for certain general requirements to which all conditionally sentenced young offenders, who are under supervision, have to submit. Section 11 of the Act reads as follows:

"The probationer has to keep his supervisor informed of his residence and place of work, report to the supervisor as requested and reply to questions asked by the supervisor; he is not allowed to move away from his place of residence or work without the consent of his supervisor; if the supervisor considers a change of residence and/or work necessary, the probationer must comply with the supervisor's request in this respect, and also in other respects he must attend to advice and directions given by the supervisor."

Violations of the conditions of suspension, and the revocation of suspension

The revocation of a conditional sentence is either mandatory, or lies within the discretion of the court.

The execution of a suspended penalty is mandatory under the following circumstances:

(a) if the offender has committed a wilful offence during the period of suspension, in respect of which he is sentenced to penal servitude or to imprisonment exceeding three months;

(b) if the offender during the period of suspension is charged with an offence committed prior to the conditional sentence for which he becomes liable to a penalty, and the combined penalty for the two offences exceeds the stipulated one year (see above, Act of 1918, s.1); and

(c) if the offender has failed to comply with the requirement to make restitution for loss and damage occasioned by his offence. If, however, the court on examination considers it proved that it has been impossible for the offender to comply with the requirement, the court has full discretion to take no action in the case.

The revocation is optional at the discretion of the court under the following circumstances:

(a) if the offender has committed a further offence during the period of suspension, in respect of which he is sentenced to fines or to imprisonment not exceeding three months;

(b) if the offender has committed a further offence during the period of suspension, but this offence is not to be considered wilful;

(c) if the offender during the period of suspension is charged with an offence committed prior to the conditional sentence, but the combined penalty for the two offences would not exceed one year;

(d) if the offender during the period of suspension becomes addicted to drink, idleness, vagrancy, prostitution or an otherwise disorderly way of living.

In all the cases mentioned above, the public prosecutor (or the plaintiff) should inform the court about the violation of the conditions of suspension.

The above provisions relate also to the revocation of probation and the execution of punishment in the case of conditionally sentenced juvenile offenders. The Juvenile Delinquents Act provides for the revocation of probation also in the case of a juvenile offender who has failed to comply with the requirements of his supervisor by evading supervision or disregarding the instructions of his supervisor. When notified by the supervisor of such violations, the court has full discretion to deal with the matter.

Apart from ordering the execution of a conditionally suspended penalty, the court is not entitled to modify the conditions or the period of suspension. This applies also to juveniles who have disregarded the instructions of the supervisor. The court can either revoke probation, or just admonish the offender.

If, within the period of suspension, no court action is taken with results in the execution of a suspended sentence, the penalty lapses and does not have the legal consequences of an executed penalty (in terms of loss of civil rights, etc.). Similarly an offender discharged from a conditional sentence is not subsequently treated as a recidivist.

2. The functioning of the court and the selective process

The specific eligibility requirements stipulated in the Act of 1918[3/] are supplemented by various considerations to which the court should have regard in selecting offenders for the conditional sentence. These considerations are, according to the Act of 1918, s.3, as follows: the offender's past, the motives leading to the offence and the circumstances under which the offence was committed, the prospect of the reform of the offender without punishment, the conduct of the offender after the commission of the offence and particularly his willingness to compensate for the damage and loss caused by his offence.

There are no statutory provisions for preliminary investigations in the case of adult offenders.

In the Supplementary Statute to the Juvenile Delinquents Act, passed in 1942, provision is made for preliminary investigation in all the cases where juveniles are brought before court. During the war it became necessary to restrict the number of investigations by excluding cases where it was likely that the offence would not involve a penalty exceeding six months' imprisonment (conditional or unconditional). The restriction is still valid, but only formally.

The preliminary investigation includes the investigation of such factors as the personal history, character and the environmental circumstances of the accused young offender. The investigation into the personality of the offender, in terms of the statute, should include the physical, mental and moral development of the accused and in particular the characteristics which might have influenced his behaviour, and also hereditary factors. The personal history should, inter alia, include investigation into the mental health of the family with a special view to criminality and insanity. Forms approved by the Ministry of Justice, listing 65 groups of questions, are used in making the investigations.

The preliminary enquiries are effected by order of the public prosecutor after the police investigation of the case, but before the case is brought to court. The investigations are carried out by the local boards of social welfare or by the Prison Association, a semi-official welfare organization which has got so-called "youth supervision offices" in the larger towns.[4/] There are still no specially trained social case-workers for this kind of work.

3/ See above.

4/ See section 4 below.

The main function of the preliminary enquiry is to help the court in deciding whether a young offender, who is eligible for a conditional sentence, should receive such a sentence, or whether he is in need of institutional treatment. In the former case, the suspension of the execution of sentence is automatically supplemented by supervision, except when it is expressly decided by the court that the offender is not to be placed under supervision during the period of suspension.

Where a juvenile, who has committed an offence before the age of eighteen, appears before a court, a representative from the child welfare board, or the board of social welfare if there is no special child welfare board, must be present in the court. Particularly in rural districts it is the same person who has carried out the preliminary investigation, but there are no statutory provisions requiring the investigator to be present in court.

A copy of the investigation report is sent to the Ministry of Justice to be kept in the central register of prisoners. If the offender commits a new offence, the report will be attached to the case file. A weakness in the system is, that the supervisor of a conditionally sentenced young offender does not receive a copy of the report.

3. Probationary supervision and treatment

According to the Juvenile Delinquents Act, s.8, the object of the probationary supervision is "to prevent the offender from committing further offences and to assist him in his efforts to lead an orderly life".

The Supplementary Statute to the Juvenile Delinquents Act referred to above provides for more detailed measures concerning probationary supervision. S.7 of the Statute reads as follows:

> "The supervisor must treat the probationer in a benevolent way and care for the best interests of the probationer; he should try to gain the confidence of the probationer, but also show strictness and firmness when necessary."

The supervisor should assist the probationer in finding suitable employment in a good environment and also encourage and advise him in his leisure-time activities.

The probationary supervision should be carried out in a way which does not arouse attention and so hamper the rehabilitation of the probationer.

If the need for the removal of the probationer from his present home surroundings or employment arises, the supervisor has the right to require the probationer to make such a change, but is also obliged to assist the probationer in obtaining a new residence or employment. There are not as yet any probation homes or hostels for this purpose, nor any special institutions or residential treatment homes for probationers.

The method of using probation as a means to secure special institutional treatment for certain categories of probationers has not yet been introduced in Finland.

The contacts between the probationer and his supervisor are made either in the home of the probationer or of the supervisor, but also in the office of the latter if he is an officer attached to the youth supervision office of the Prison Association or to the child welfare board. The probationer is, as a rule, required to report at regular intervals. These interviews are checked in the "supervision books" of the probationer and the supervisor. The supervisor keeps also a supervision register card for each probationer, on which he checks all the measures taken in respect of the probationer.

4. Personnel

There are no special requirements as to the personality traits of a supervisor. The law prescribes only that the supervisor should be of good reputation and also in other respects suitable in terms of personal qualities. As the great majority of supervisors for conditionally sentenced young offenders are unpaid volunteers, the selection of such supervisors is not very formal.

A certain number of salaried supervisors are attached to the Prison Association, a semi-official organization responsible for supervisory functions in connexion with probation and parole and also for a great part of the work involved in preliminary investigations and after-care. The Prison Association receives financial support from the State for the work performed in connexion with preliminary enquiries and probationary supervision of young offenders. The personnel of the central office of the Prison Association and its youth supervision offices, established in the largest centres of population, is employed on either a full-time or a part-time basis. In addition, a great number of volunteers are attached to the Association.

Probationary supervision is carried out on a voluntary basis also by officials attached to the local boards of social welfare.

There are no provisions for the training of probation officers. Approximately once a year the Prison Association arranges a short course on probation in which persons engaged in probation work participate. The organization of special regular training courses is at the moment very important.

5. Organization and administration of the service.

According to the Juvenile Delinquents Act, the organization and control of probationary supervision is entrusted to the Prison Department (the Prison Administration) of the Ministry of Justice. There is no contact established between the courts and the bodies responsible for probationary supervision. The courts only inform the Prison Administration about cases where a young offender has received a conditional sentence, supplemented by supervision. The appointment of the supervisors is also entrusted to the Ministry of Justice.

The Ministry of Justice can delegate the task of exercising probationary supervision to the local board of social welfare or to a voluntary organization.

The function of administering the probationary supervision has, in accordance with the last mentioned legal provision, been delegated to the aforementioned Prison Association, to be exercised under the superior control of the Ministry of Justice.

On receiving notification from the court about a conditionally sentenced young offender, the Prison Administration notifies the central office of the Prison Association about the case. Through its local youth supervisory offices or the local child welfare boards, or by addressing enquiries to persons listed as volunteers, the Prison Association tries to find a suitable supervisor for the offender. The final appointment of the supervisor is then made by the Ministry of Justice.

The local control of probationary supervision is exercised by the local board of social welfare. Every three months the supervisor has to report about the supervision to the board and show them the "supervision book", and once a year he has to send the supervision card to the Prison Administration for inspection. The board has to send a list of all probation cases in its area once a year to the Prison Association.

FRANCE

Part I

ADULT OFFENDERS

I. Legal provisions and scope of application

Probation for convicted persons is, at present, unknown in French legislation.

In recent years the authorities have, however, given thought to this problem since it appeared to them that the probation system was a means of preventing recidivism by applying treatment to offenders in freedom, thus avoiding the disadvantages of penalties involving the loss of freedom and, in particular, short prison sentences.

It is with this aim in view that two years ago, in October, 1950, the Minister of Justice decided:

(a) within the limits of the legal possibilities of the law, as it then stood, to attempt a practical experiment of putting on probation certain offenders sentenced to short terms of imprisonment, and

(b) to instruct a committee to study the legislative aspects of the problem and to prepare, if possible, the text of a draft statute, aimed at adapting the probation system to the institutions of French law: this method of carrying out the reform was intended to allay possible doubts in the minds of the public, whose agreement is essential to the success of the undertaking.

(a) The practical experiment

This experiment is now proceeding in four judicial divisions. Its operation may be summarized as follows: When the court has sentenced an offender to one or more terms of imprisonment not exceeding one year in aggregate, the "Procureur de la République" responsible for the execution of the sentences, in his capacity as a representative of the executive power, chooses between the two following methods, after obtaining the advice of certain duly qualified authorities:

execution of the sentence: in this case, a magistrate (the chairman of the post-penal welfare committee) decides, in each instance, whether the convicted person should be imprisoned, whether he should be put to work outside ("en chantier extérieur"), or whether he should be granted "semi-freedom";

suspended sentence with probation: in this case, the execution of the sentence is deferred; the magistrate, who is chairman of the post-penal welfare committee, appoints an officer who is made responsible for helping the offender, for supervising his behaviour and for reporting any incidents likely to cause the decision to be amended or reversed, it being understood that this supervision is not in the nature of a police "surveillance"; it is further provided that if two years elapse without any further incidents, the "Procureur de la République" shall initiate an appeal for mercy in favour of the offender.

(b) Legislative action

The study carried out by the Committee has culminated in a draft statute, tabled by the Government in the National Assembly in July, 1952; Parliament is expected to discuss this draft in the forthcoming months. The text of the draft is attached as an Annex, together with the official statement of justification; the principal elements of the draft are as follows:

1. The decision to place a person on probation may only be taken when the facts of the offence have been established as the result of judicial proceedings.

2. Probation may only be granted by the court in which the case has been heard.

3. Probation is not subject to the consent of the offender.

4. It is only granted after the offender has been convicted.

5. It supplements the former institution known as "suspended sentence" ("sursis") as it exists in most Continental systems of legislation. From the technical point of view, its introduction into French law is effected by an amendment to the Act of 26 March 1891 on the mitigation and the aggravation of punishment; this circumstance reduces the scope of application of the new measure which, in the same way as the traditional "sursis", may only apply to "peines correctionnelles" (imprisonment and fines), to the exclusion of "peines criminelles" (e.g., solitary confinement and hard labour). The granting of probation will, therefore, depend, not only on the personality of the offender and his rehabilitation possibilities, but also on the objective nature of the offence and the seriousness of the facts;

6. Within the limits stated in the preceding paragraph, magistrates will, therefore in future have the choice between:

a definite sentence which is to be executed;

a sentence (imprisonment or fine) the execution of which is suspended by granting the traditional form of "sursis" (suspension) which includes no obligations; this older form of "sursis" is only permissible in cases where the convicted person has not previously been sentenced to a term of imprisonment or to a more severe penalty for an offence ("crime ou délit de droit commun");

a sentence (term of imprisonment or fine) with suspension and probation, including certain obligations, for a period not exceeding five years; this new method of "sursis" will be applicable even where the offender has already been convicted of an offence, on condition, however, that the previous conviction did not carry a sentence of more than one year's imprisonment.

7. Should the person concerned be sentenced again, within the period of five years, to a penalty involving the deprivation of liberty for an offence, the "sursis" with probation will be cancelled automatically, as in the case of the traditional "sursis"; if no further offence is committed within the five-year period, the sentence will be considered as null and void and the convicted person will be fully reinstated in his rights, as is the case under present legislation for the convicted person who has been granted the ordinary "sursis". The new draft legislation also provides that a convicted person who is granted a "sursis" with probation can be made to appear before the court if his behaviour is unsatisfactory or if he fails to comply with the obligations imposed by the court. In such a case, the court may either change the conditions imposed upon the convicted person or cancel the probation measure and order that the sentence be executed.

8. Probation may be granted to young offenders (see Part II of this Report).

II. Operation of the court and selection procedure

This section is sub-divided in the same way as the preceding section, namely, into sub-sections dealing with the current experiment and with the provisions of the draft statute.

(a) The practical experiment

By definition, the experiment which is being carried out within the framework of current legislation has in no way altered the procedure of the courts, the decisions of which are made, as heretofore, without regard, in principle, to their possible subsequent variation and, in any case, without the courts playing the least part in the subsequent individualization of the penalty which they impose on the offender. Only after the offender has been convicted do the "Procureur de la République" and the magistrate (the chairman of the post-penal welfare committee) decide on the type of measure to be considered. The selection of this measure is based on the data collected by the welfare officer of the prison service concerning the character of the offender and the surroundings in which he lived.

(b) The draft statute

The draft statute provides that when the pre-sentence judicial enquiry is being made, the examining magistrate may, each time he deems it appropriate, order that a social investigation , as well as medical and psychological examinations, be carried out. In cases where the appropriate court hears the case without a

pre-sentence investigation being carried out, the draft clearly provides for the possibility of dividing the criminal proceedings into two phases: instead of making its decision at once both on the guilt and on the penalty, the court may first establish the guilt of the offender and order that a social investigation and medical and psychological examinations be carried out, and then, by a later decision, the court may select the measure which is most appropriate to the character of the offender. Thus, the draft would introduce into French Law a practice which is current in Anglo-Saxon criminal procedure and the advantages of which, in this context, have been so often stressed at recent international meetings.

The method of selection is based on the medico-psychological examination and the social investigation ordered either by the examining magistrate or by the competent court, and which throw light on the character of the offender. The proposed statute will mark the first step in the introduction of a pre-sentence scientific examination of adult offenders in France.

III. Supervision and treatment under probation

(a) The current practical experiment

Convicted persons who have now been granted a deferred sentence with probation are placed under the supervision of a probation officer ("délégué") appointed by the chairman of the post-penal welfare committee.

(b) The draft statute

The text of the draft refers, on this point, to a "Règlement d'administration publique" (administrative order). In other words, once the legislation has been passed, the Government will lay down, after consultation with the "Conseil d'Etat" (Council of State) the details of supervision and treatment of convicted persons who are placed on probation. In this respect, the discussions of the Seminar organized by the United Nations will provide invaluable information.

IV. and V. Personnel - Organization and administration of the probation service

(a) The current practical experiment

The personnel responsible for the supervision of probationers are under the control of the Prisons' Administration by which the system has been organized. The numbers involved are too small to justify detailed description.

(b) The draft statute

These aspects of the problem are also dealt with by the "Règlement d'administration publique" mentioned in the above paragraph. Here again, the French delegation hope to learn valuable lessons at the London Seminar, with particular reference to the selection and recruitment of qualified and specialized personnel (which involve a serious financial problem).

VI. Assessment of results

The above remarks will suffice to show that the question put to us under this heading cannot be answered.

Part II

JUVENILE OFFENDERS

I. Legal provisions and scope of application

A. Introductory remarks

1. Relevance of the preceding statement

The application of the above provisions to juvenile delinquents below the age of 18 has been clearly provided for in the draft statute on the application of probation to certain convicted persons (Sections 1 and 2).

The following remarks are in place:

(a) The draft legislation would introduce into juvenile law two new possibilities which are of considerable importance, namely:

(1) that of making probation subject to the sanction of the execution of a previously determined penalty, and

(2) that of extending the effects of probation beyond the age of 21.

(b) It would, however, appear that its scope will be extremely restricted, for the following reasons:

(1) The application of the draft statute presupposes that the young offender is sentenced to a term of imprisonment which can be executed - hence the exclusion

- of young offenders below the age of 13 who are not subject to criminal responsibility;

- of the large majority of young offenders between the ages of 13 and 18, to whom educational measures are usually applied (Act of 24 May 1951, Sections 1 and 2); and

- of short sentences covered by detention pending trial.

(2) Since the Act of 24 May 1951 was adopted, young offenders may be granted a more flexible type of probation, that of liberté surveillée (supervised freedom).

2. Present statement restricted to liberté surveillée

The system of liberté surveillée, introduced into our law by the Act of 22 July 1912 and subsequently improved, is the most important and most characteristic of French institutions associated with the concept of probation; the following paragraphs will therefore be devoted to a study of its special features and to details of its implementation and operation.

We should, however, only be giving an incomplete idea of the importance of probation in juvenile law if we did not point out the decisive effect of the behaviour of the young offender during the execution of such a flexible measure on the future of that measure.

We should consider, in particular, that true probation applies to young offenders who have been:

(1) placed under observation: the proofs of rehabilitation which they have given will largely influence the choice of the magistrate between re-education and repression and the selection of the measure;

(2) ordered to reside in a particular place: this order may be altered at any time according to the results obtained which are brought to the notice of the juvenile court magistrate by means of periodic or special reports; it may even be changed to detention in a special institution (Section 28, para. 3 of the Act of 24 May 1951);

(3) granted release to test their behaviour;

(4) convicted and granted a conditional release.

3. Main characteristics of liberté surveillée as a "probation" measure

(a) Autonomy and independence in relation to the Anglo-American probation movement

It would appear that liberté surveillée originated in a practice already followed by the "Parquet" (Public Prosecutor's Department) in the last century

when they refrained from executing placement orders and simply left juvenile offenders on trial in their own homes, on condition that they be of good behaviour.

Whilst the main characteristic of probation proper is the conditional suspension of the imposition of the execution of sentence, the usual feature of liberté surveillée lies in the possibility of amending a measure which has already been applied (4,884 liberté surveillée orders were made as an accessory measure in 1950, against 373 orders as an "interlocutory" measure).

(b) Extensive range of measures available to the judge

The many forms that liberté surveillée may assume, make its use very flexible, thus allowing for

(1) the suspension of the finding of guilt ("liberté surveillée provisoire");

(2) the suspension of a decision on the measure or the penalty after a finding of guilt ("liberté surveillée préjudicielle"); and

(3) the possibility of ordering further measures after a decision has been made on the measure or the penalty ("liberté surveillée accessoire").

(c) No consent by the offender (previous request or acceptance);

(d) Considerable amount of assistance offered to the magistrate by private persons (voluntary "probation" officers).

B. Current legal provisions

(1) Act of 24 May 1951, Sections 8, 10, 19, 25 et seq.

(2) Order of 1 July 1945 (partly rescinded).

(3) Order of 15 October 1951.

C. Scope of application of the liberté surveillée

The statutory scope of the liberté surveillée has been extended by the Order of 2 February 1945 and the Act of 24 May 1951. Today it is indeed the most frequently applied educational measure.

(a) Statutory scope:

Liberté surveillée may apply:

(1) to young offenders below the age of 18 at the time of the offence,

(2) to young offenders below the age of 21 ordered to be placed under the custody of another person ("modification de garde"),

(3) to young offenders left in their homes or ordered to live with another family or in public or private institutions (including Child Welfare Institutions and Public Institutions for Supervised Education); and

(4) to young offenders sentenced to a penalty.

(b) Extent of application:

In 1950, 4,884 young offenders were placed under liberté surveillée in their own homes, whilst 2,348 were placed in private institutions, 1,200 in Public Institutions for Supervised Education, and 173 in Child Welfare Institutions.

II. Operation of the court and selection procedure

A. Operation of the court

The judicial authorities alone are entitled to place an offender under liberté surveillée. These authorities proceed in the same manner as for any other measure. The following special points should, however, be noted:

(a) Placing an offender under liberté surveillée:

"liberté surveillée provisoire" is ordered whilst the case is being investigated.

"liberté surveillée préjudicielle" is decided by the court which hears the case.

(b) Points of law in relation to liberté surveillée:

The rules of competence and procedure are the same as those applicable to the more general field of change in custody. They include certain accommodation in relation to the competence ratione materiae (extension of powers of juvenile courts, in particular for juvenile court magistrates) and in relation to the competence ratione loci (delegation of competence, provisional measures).

B. Selection procedure

Liberté surveillée, being a very flexible measure and also complementary to other measures, may be applied, according to circumstances, to all categories of young offenders.

III. Supervision and treatment under probation

Liberté surveillée may be applied with a view to attaining a large number of educational objectives which are cumulative, or mutually exclusive, as the case may be.

(a) The supervision of the young offender:

This was the original objective, considered as essential, whence the term liberté surveillée.

Even when this objective is accompanied by other objectives, it remains important, since liberté surveillée provides the juvenile court magistrate with a useful means of remaining informed of the attitude of the young offender and the risk of further offences.

(b) The observation of the young offender:

Liberté surveillée enables the young offender to be observed in his normal surroundings, and the conclusions drawn from such observation are often more valuable than observation made in a residential institution.

(c) The education of the young offender, and influencing the family:

The educational influence of the officer on the young offender and his family is being increasingly used and liberté surveillée, "an instrument for the judicial protection of young offenders, appears today as the administrative and technical support of re-education in freedom".

IV. and V. Personnel - Organization and Administration of the probation service

A. The voluntary officer

The voluntary officer is nominated by the juvenile court magistrate. The young offender is placed under his care at the time when he is placed under liberté surveillée or sometimes later.

"Recourse to non-professional officers is the characteristic feature of the French system, since liberté surveillée is mainly based on the action of the voluntary officer who is above all an educator, a vigilant and active educator, a friend to the young offender and an advisor to his family."

B. The professional officer

The professional officer is nominated by the Minister of Justice, acting on advice from the juvenile court magistrate. Qualifications are laid down in the Order of 19 October 1951.

"Statutorily an agent of the State, the permanent officer is functionally an assistant to the magistrate".

His main task, under the direct authority of the juvenile court magistrate, is as follows:

(1) to direct and co-ordinate the work of voluntary officers, recruit and train them;

(2) to carry out direct supervision of young offenders placed under his special care by the magistrate; and

(3) to administer the liberté surveillée service, prepare the cases, keep the records and inform the magistrate.

VI. Estimate of results obtained

The organization of the "liberté surveillée" services is too recent (140 professional officers at present) to enable us to get a fair idea of the percentage of successes or failures.

As an indication a number of juvenile court magistrates have, however, prepared statistics. From the comparison of such statistics, the following percentages appear to emerge:

- successes ..... 60 per cent
- doubtful cases..... 20 per cent
- failures ..... 20 per cent

A N N E X

REPUBLIQUE FRANCAISE

Ministry of Justice

B I L L

amending the Act of 26 March 1891 on the mitigation and augmentation of penalties, with a view to enabling certain convicted persons to be placed on probation

JUSTIFICATION

All criminal law experts are today agreed that the best method of preventing recidivism is to help offenders to resume their place in society, where this proves practicable.

Among the methods applied to this end, we note, in certain foreign legislations, the institution whereby the judge is allowed to submit an offender to a certain period of test, after which no sentence is given and no term of imprisonment is served, if his behaviour has proved satisfactory.

This is the system known in the Anglo-Saxon legislations as "probation".

French Law has long since included two institutions which proceed from the same concept and are designed to submit convicted persons to a test with a view to their rehabilitation.

The first of these institutions is the "sursis", which enables the French judge to grant first offenders a suspended sentence, on condition that they commit no further offence within a period of five years. The second institution is the "conditional release" ("libération conditionnelle"), which enables a convicted person to be given his freedom before he has completed his sentence, with a view to his rehabilitation.

The "Chancellerie" (Chancellery) advised by the best authorities on the matter, have examined the extent to which the placing on probation of offenders, as is practised in certain countries, could be adapted to our judicial system and combined with the existing institutions which have a similar purpose.

From the information collected on the current systems applied, in particular, in the United Kingdom, in the United States and in the Scandinavian countries, also on the legislative studies carried out in Belgium, it was soon apparent:

(1) that the foreign systems could not readily be adapted to France;

(2) that the system which might be applied within the framework of our institutions and which left the decision to the "Parquet" (Public Prosecutor's Department), was not acceptable - indeed, if the results are to remain valid, all probation orders have to be made by the Courts;

(3) that it was not possible to discontinue the institution of "sursis" since some foreign legal systems which include probation are proposing to combine this probation with our type of "sursis" which they regret not to possess;

(4) that the most simple and efficient means of carrying out the reform would consist, therefore, in introducing probation into the Act relating to "sursis" and to authorize judges to grant either "sursis" as it stands at present, or a new type of "sursis" combined with probation, including certain obligations.

Such is the object of the Bill which amends the Act of 26 March 1891 accordingly, in order to achieve the following results:

1. an ordinary measure of "sursis" may be granted as heretofore and in the same conditions as under present legislation;

2. in cases where the judges could grant an ordinary measure of "sursis", they will be given the possibility of combining this with probation, including certain obligations to be determined by an administrative order (e.g., prohibition from frequenting certain persons or certain places, obligation to report on way of life from time to time, etc.);

3. "sursis" may be granted even when the accused has already been sentenced to a term of imprisonment, but, in such a case, probation will be compulsory;

4. where a further conviction is incurred, the "sursis" order will be fully rescinded as heretofore. However, the new text provides that in cases of bad behaviour or non-observance of the obligations imposed, the court may either impose further obligations or rescind the "sursis" with probation and order the execution of the sentence;

5. finally, interim measures are provided in order that persons sentenced with "sursis" before the adoption of the new Act may be granted probation in the event of a new conviction rescinding the "sursis" granted under the terms of the former legislation. Although such a privilege has no justification for persons who will be sentenced with "sursis" under the terms of the new Act, since the judge will have had the choice between the various types of "sursis", it is quite a different matter for persons already sentenced at present. It would be harsh not to make it possible for the judge to give them the benefit of the new institutions, thus giving them a final opportunity to rehabilitate themselves.

6. "Sursis" with probation will be applicable to juveniles and will thus complete the range of measures which may be taken by the juvenile court magistrates. This new institution will have the advantage of enabling judicial supervision to be continued beyond the age of civic majority in cases where this proves to be desirable. Under present legislation, "liberté surveillée" ends as soon as the young offender reaches the age of twenty-one, although the young man or girl is sometimes incapable of good behaviour without supervision and is likely to commit a further offence.

Article 1

Article 1 of the Act of 26 March 1891 on the mitigation and augmentation of penalties is hereby amended as follows:

"In cases where an accused person is sentenced to a term of imprisonment or to a fine and has not been previously sentenced to a term of imprisonment or to a heavier penalty for a crime or misdemeanour ("crime ou délit de droit commun") the Courts may order, in the same sentence, by a justified decision, that the execution of the sentence be suspended by 'sursis'.

"This decision may be combined with probation, including certain obligations, for a period of not more than five years.

"An accused person who has been previously sentenced for a crime or misdemeanour to a penalty not heavier than one year's imprisonment may be granted a suspension of the execution of the sentence by 'sursis', but, in such cases, he shall be placed on probation in the above-mentioned conditions.

"With regard to persons who are likely to be placed on probation in the above-mentioned conditions, the examining magistrate orders, whenever he deems it desirable, that the necessary social, medical and psychological investigations be carried out. When a case is brought before a Court of Appeal and other courts without a preliminary examination, these Courts may, when giving their finding on guilt (and, if necessary, damages) order that social, medical and psychological investigations be carried out, and may defer the case to a later hearing for a decision on the sentence. Except with regard to damages, an appeal can only be made after this decision. It applies to all the decisions taken during the public proceedings which shall be deemed to represent a single sentence or adjudication.

"If, for five years following the date of the sentence or adjudication, the convicted person is not prosecuted and sentenced to a term of imprisonment or to a heavier sentence for a crime or misdemeanour, and with the exception of cases of repeal in accordance with the provisions of the following paragraph, the sentence shall become null and void. Otherwise, the original sentence shall first be executed and may not run concurrently with the second.

"If a probationer's behaviour is unsatisfactory, or if he fails to observe the obligations imposed on him, he may be made to appear before the Court. The case is brought by the Public Prosecutor who may order provisional detention. By a decision made at a public hearing (except for offenders below the age of 21 who are sentenced under the terms of Articles 67 and 69 of the Penal Code) the Court sitting in Chambers may either change the obligations imposed on the offender or rescind the 'sursis' and order the execution of the sentence.

"A change in the conditions of probation may be ordered from time to time, in the manner provided in the above paragraph, at the request of the probationer, his family, or the guardian of a person below the age of 21, when the sentence was given under the terms of Articles 67 and 69 of the Penal Code.

"The following are empowered to make decisions on all aspects of probation:

"1. The Court which has made the probation order. The 'Chambre des mises en accusation' deals with cases of probation ordered by a 'Cour d'Assises'. The Juvenile Courts deal with all cases concerning persons below the age of 21 who are granted probation by a Juvenile jurisdiction.

"2. By delegation of power by the jurisdictions mentioned at 1 above, the Court at the place of residence of the probationer.

"If the case is urgent, provisional measures may be taken by the 'Procureur de la République' (Public Prosecutor) of the place where the probationer may be found.

"However, the Juvenile Court Magistrate is competent to deal with young offenders below the age of 21 when the sentence has been given under the terms of Articles 67 and 69 of the Penal Code.

"When the young offender reaches his majority, the rules of competence relating to adults become applicable; the Court of his place of residence at the time of the offence becomes competent to deal with his case, except where its powers are delegated to another court in the circumstances stated in paragraph 2 above."

Article 3 of the above-mentioned Act is amended as follows:

"The President of the Court shall warn the convicted person, after the sentence has been suspended, that if he incurs a further conviction or if the order is rescinded in the circumstances stated in Article 1, the original sentence..."(the remainder of the Article is unchanged).

Article 2

The above-mentioned Act is completed by a new Article 8, as follows:

"Article 8. - An administrative order will determine the rules concerning the social investigation and the medical and psychological examinations, the probation order and the requirements that may be imposed on the convicted person, and all details, in particular those concerning young persons".

Article 3

If a sentence with "sursis" combined with probation, rescinds a "sursis" granted before this Act comes into force, the Court may, by the same adjudication or sentence which grants the second "sursis", state that the execution of the original penalty shall remain suspended.

Should the "sursis" attached to the second sentence be rescinded, the two sentences shall be executed in succession; they may not be served concurrently.

Otherwise, the two sentences shall be deemed null and void at the end of a period of 3 years from the date of the sentence or adjudication relating to the second conviction.

This Act is applicable to offences committed before it came into force and not judged after trial without appeal.

Article 4

This Act is applicable from the date of promulgation of the administrative order mentioned in Article 3 of the said Act.

GERMANY, FEDERAL REPUBLIC OF

Introduction

In German criminal law probation has not been embodied either as provided by the Anglo-American legislation or in the sense of "sursis" as known in European legal systems. There are, however, a number of existing regulations which are serving purposes similar to probation.

I. Discontinuance of proceedings:

1. Discontinuance of proceedings in cases involving adult offenders

In cases involving adults, section 153 par.1 of the German Code of Criminal Procedure provides for discontinuance of proceedings on the understanding that the prosecuting authority is not bound to prosecute mere contraventions if the offender's guilt is minor and the consequences of the punishable act are unimportant unless the public interest requires a decision to be taken by a court. If, with regard to medium offences, the offender's guilt is minor and the consequences of the offence are unimportant, the public prosecutor may, with the consent of the judge of trial court, desist from preferring an accusation (s.153 par.2 StPO *). With the consent of the prosecuting authority, the court may take the same course if procedure has already been instituted and it then appears that the requirements provided by s.153 StPO can be deemed to be fulfilled.

2. Discontinuance of proceedings in cases involving juvenile offenders

Section 30 of the Juvenile Court Act (JGG) contains a special provision regarding discontinuance of proceedings for minor guilt, which is substantially more far-reaching. According to this provision, the public prosecutor may desist from further prosecution whenever he feels that judicial punishment can be dispensed with if educative measures are ordered by the judge of the Guardianship Court or if an admonition is given. If necessary, he shall suggest such measures to be taken by the judge of the Guardianship Court. Since the latter and the magistrate dealing with offences of juveniles are not always one and the same person it has been provided that special obligations (e.g. imposition of work) or an admonition, if any, may be likewise pronounced by the magistrate dealing with offences of juveniles (s.30 par.1 JGG). If any educative or disciplinary measure has already been taken and, thus, punishment by the magistrate can be dispensed with, the public prosecutor shall desist from prosecution without need of any further special action by the judge of the Guardianship Court, or the magistrate dealing with offences of juveniles. He shall, in general, exercise this power in cases of minor importance (s.30 par. 2 JGG).

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* Note: Abbreviations as used in this report mean: DJ = Deutsche Justiz (German Justice Review); JGG = Jugendgerichtsgesetz (Juvenile Court Act); JMBl = Justizministerialblatt (Law Gazette of the Ministry of Justice); RGBl = Reichsgesetzblatt (Law Gazette of the Reich); StPO = Strafprozessordnung (Code of Criminal Procedure).

If proceedings have already been instituted, the judge may discontinue the proceedings under the same conditions, with the consent of the public prosecutor. Moreover, he may do so in such cases where the juvenile, in view of his retarded maturity, cannot be held criminally responsible for the offence. Such discontinuance of proceedings may be accompanied by an admonition (s.30 par.1 and 2 JGG). In contrast to the regulation under s.153 StPO regarding adult offenders, discontinuance of proceedings is possible in regard to juveniles even in the case of a crime. This shall, for instance, be taken into consideration in such cases where the judge of the Guardianship Court had already ordered measures such as approved education in residential schools or foster homes or the placing under protective supervision.

3. Pre-sentence Probation

On the basis of the provisions of s.30 JGG, a few magistrates dealing with offences of juveniles have made use of "pre-sentence probation" (cf. Clostermann, DJ 1938, p.827). When doing so, they bear in mind the pattern of probation in the proper sense of the term. Since, in contrast to Anglo-Saxon law, the German criminal procedure does not provide for a separation of proceedings into conviction on the one hand and assessment of punishment on the other, it may be justifiable to look upon this form of applying s.30 JGG - ventured only by a very small number of magistrates dealing with offences of juveniles - as a measure being similar to probation as used in Anglo-Saxon legal systems. Pre-sentence probation brings about the disadvantage that, in case of the juvenile's failure during probation, difficulties in resuming the criminal proceedings might arise. In practice, however, this risk has been negligible on account of a very careful selection of suitable cases.

II. Application of the power of pardoning

The above summary on the provisions as laid down in the Code of Criminal Procedure and in the Juvenile Court Act, however, does not give a complete picture of the actual situation in the administration of criminal justice in Germany. While, outside Germany, legal enactments, with a view to eliminating short-term imprisonment, have been in operation for some time, in Germany, "conditional suspension of sentence", granted by way of pardon, has also operated for some time. In this connexion, it may be pointed out that "suspension of criminal prosecution" was introduced into the legislation of the Land Saxony by ordinances dated as early as 25 March 1895 and 23 March 1903. This was possible owing to the fact that the sovereign held not only the power of pardoning in special cases but even the power of quashing special proceedings (abolition in the narrower sense). In the following period, nearly all German Länder instituted at least the legal possibility of suspending execution of sentence by way of a special decision on pardoning in each single case, granted under the condition of probation. Such decision was a matter for the Ministers of Justice of the Länder. Moreover (e.g. by Royal Order of the King of Prussia dated 23 October 1895 - JMBl. p.348) when the power of pardoning was delegated to the Ministers of Justice, it was generally made clear that use should be made of the authority to exercise the power of pardoning primarily in favour of first offenders who, on the date of committing the offence, had been less than 18 years of age and had been sentenced to imprisonment for not exceeding 6 months (cf. von Liszt, "Bedingte Verurteilung und bedingte Begnadigung", in: Vergleichende Darstellung des deutschen und ausländischen Strafrechts (Conditional judgment and conditional pardoning, in:

Comparative Survey on German and foreign criminal law), Vol.III, 1908, p.45; Decree dated 13 October 1895 - JMBl.p.348). In 1903, by mediation of the Board of Justice of the Reich, common principles on the application of conditional suspension of sentence by way of pardoning were agreed upon by the governments of the Federal States concerned.

After World War I a further step was taken by delegating the exercise of the power of pardoning to the Courts (e.g. in Bavaria on 11 July 1919, in Baden on 17 December 1919, in Hamburg on 11 July 1920, in Prussia on 2 August 1920: General Decree of the Prussian Minister of Justice on conditional suspension of execution of sentence, dated 19 October 1920 - JMBl.p.565 in the version of 15 and 29 June 1921 - JMBl.p.349, 370).

Since 1909, drafts for amendment of the German Criminal Code again and again made suggestions to introduce conditional suspension of sentence as a measure to be taken by the judge in or after his judgment. Nevertheless, in spite of referring to the procedure as already practised by way of pardoning, these suggestions have never been realized because of the fact that the reform of the Criminal Code has always been frustrated by different obstacles. In the Länder of the Federal Republic, conditional suspension of sentence is being granted now as before by way of pardoning. The legal basis is either the ordinance of pardon as enacted on 6 February 1935 (RGBl. I p.74) or the new provisions enacted by the Länder (e.g. Bavaria: Proclamation of the Bavarian State Minister of Justice on the pardon procedure, dated 24 July 1947 - JMBl.p.23, as amended on 20 July 1949 - JMBl.p.132; North-Rhine-Westphalia: General Ordinance of the Minister of Justice on the procedure of pardon, come into effect on 1 April 1952 - JMBl.1949, p.3; Rhineland-Palatia: Ordinance of the Minister of Justice of the Land on the pardon procedure in Rhineland-Palatia, dated 13 October 1948 - Official Special Publication No. 2).

III. The Juvenile Court Act of 16 February 1923 - RGBl.I p.135.252

Only the regulation for conditional suspension of sentence as provided by the draft of the Juvenile Court Act dated 24 October 1922 (Printed Paper of the Reichstag No. 5171) became effective in 1923 in s.10 - 15 of the Juvenile Court Act. Here, for the first time, conditional suspension of sentence has been stipulated as a judicial function. In 1943, the national-socialist legislator nullified these provisions on the occasion of an amendment of the Juvenile Court Act (Law of 6 November 1943 - RGBl. I p.637) because he felt that the so-called Youth Arrest was a sufficient substitute for short-term imprisonment and, also, because he considered suspension of sentence was a measure incompatible with the authority of the state.

IV. Conditional suspension of sentence after 1945

After World War II, Germany has, so to say, re-discovered foreign developments. Already a short time after the foundation of the Federal Republic, preparations have been made to introduce at least the most urgent amendments of criminal law regarding both juvenile and adult offenders. At present, the

Bundestag is occupied with two draft-laws which have already been approved by the Bundesrat in so far as conditional suspension of sentence is concerned. These draft-laws regulate the conditional suspension in the following way:

1. Regulation as provided by the draft-law to amend the Juvenile Court Act of the Reich:

(a) Sections 13a - 13l of the draft regulate suspension on probation, by the court, of sentence for juveniles.

The judge will be given the power to suspend sentences not exceeding one year for juveniles by judgment or even by a subsequent decision in order to give the juvenile a chance to prove by good conduct during a fixed period of time that execution of sentence can be dispensed with.

It will be made a prerequisite for such action that the personality and the antecedents of the juvenile offender as well as his behaviour or any favourable change in his living conditions after the offence justify the expectation that, in future, he will lead a law-abiding life. The probation period may be from two to three years. A subsequent reduction to two years in case of good conduct or prolongation to four years in case of the juvenile's failure is provided for. During the probation period, the magistrate may control the juvenile's conduct of life by giving directives and imposing special obligations; he will co-ordinate the probation conditions in a special probation programme. An important innovation, compared with the former application of the conditional suspension of sentence, is that the juvenile's conduct of life and his compliance with the probation conditions is supervised by a professional probation assistant under the direction of the magistrate. Furthermore, it will be possible to appoint a voluntary helper instead of a professional probation assistant. This can be done if supervision as exercised by an official probation assistant does not appear advisable from an educational point of view or if, because of the small number of criminal cases arising in a certain district, appointment of a full-time assistant is not appropriate.

Moreover, the draft includes provisions relating to the duties of the probation assistant, the revocation of the suspension of sentence for juveniles, the renewal of the judgment and the delegation to the competent magistrate of another trial court, of the power to pass decisions regarding probation assistance.

(b) Suspension of the imposition of the sentence for juveniles

Furthermore sections 13m - 13r of the draft provide that, in specified cases, the guilt of the juvenile shall be established by a judgment whereas the decision on the imposition of a sentence for juveniles shall be suspended. This procedure will apply only when the magistrate is unable to decide with adequate certainty whether the delinquency of a juvenile reveals tendencies sufficiently serious to justify punishment. In such

cases, the probation period may be not less than one year and not more than two years; the juvenile will be placed under supervision on probation, that is to say directives will be given to him, obligations will be imposed, and a probation assistant will be appointed to take care of him etc.

(c) Conditional suspension of sentence and the penal register

Both in cases of the suspension of the execution of the sentence for juveniles and the suspension of imposition of sentence for juveniles, the condemnation shall be entered into the penal register (s.69). Nevertheless, in both cases, information on the criminal record will be given, during the probation period, only to courts, prosecuting authorities, criminal bureaux of the Länder and supreme authorities of the Federal Republic and of the Länder upon specific request. If, in case of probation, the sentence for a juvenile is remitted, the entry in the penal register will be erased (s.70a, par.2). Likewise, the magistrate may declare the entry erased if the juvenile has completed probation satisfactorily (s.73p par.1 in connexion with s.70a par.1).

2. Procedure as provided by the draft-law to amend the Criminal Code

(a) Suspension of sentence on probation

Sections 23 - 26 of the draft-law to amend the Criminal Code (Printed Paper of the Bundesrat No.287/52) provide as follows:

The court may suspend the execution of a sentence involving imprisonment not exceeding 9 months in order to give the convicted person a chance to earn remittal of sentence by good conduct during a probation period. In such cases too suspension of the execution of a sentence may only be ordered if the personality of the convicted, his antecedents of his act as well as his behaviour after the offence or any favourable change of his living conditions give reason to expect that, in future, he will lead a law-abiding and orderly life. Suspension of sentence, however, may not be granted if the execution of the sentence is required by the public interest, if a sentence involving imprisonment, passed in this country, has been suspended on probation or by way of pardoning during the five years preceding the commitment of the offence, or if sentences involving imprisonment totalling more than 6 months have been inflicted on the convicted offender in this country during the said period (s.23).

Section 24 provides for detailed arrangements to be made regarding the probation period which may be not less than 2 and not more than 5 years. In such cases too, the court may control, by imposition of requirements, the convicted person's conduct of life. Such requirements may be e.g. reparation of the damage caused, directives regarding place of residence, training, work, leisure time activities, submission to medical treatment, compliance with obligations to pay maintenance costs, or payment of a fixed sum for purposes of public welfare. In case of probation, sentence shall be likewise remitted after the expiry of the probation period.

The execution of the sentence must be ordered if circumstances which would have caused refusal of suspension become known or if the convicted person is sentenced, in this country, to imprisonment on account of a crime committed during the probation period or of a wilful offence. The execution of the sentence may and shall be ordered if the convicted person gravely violates the probation conditions or otherwise shows that the confidence bestowed on him has not been justified.

(b) Handling of suspension of sentence regarding adult offenders in connexion with the penal register

In contrast to juvenile criminal law, no restriction on giving information with regard to entries in the penal register during the probation period has been provided for adults. If the adult person proves himself worthy, the court may order that, after the expiry of the probation period, information on entries shall henceforth be given restrictedly. That means that, from this date, only authorities as mentioned above shall be given information upon specific request, but on no account other authorities or private agencies.

V. Promotion of the practical development of probation assistance

Side by side with these legislative amendments, the Federal Ministry of Justice has promoted the practical development of probation assistance by making available special funds to promote probation for juveniles over a wide area. Such funds are being administered by the association: Bewährungshilfe (Probation Assistance). This association has appointed professional probation assistants. They are directly responsible to the magistrates dealing with offences of juveniles and attached to 5 trial courts. Also, the legal administrative authorities of the Länder have delegated the power of pardoning to the competent magistrates dealing with offences of juveniles so that the latter are able - prior to the operation of the legal amendments now under deliberation - to apply conditional suspension of sentence, simultaneously placing the juvenile under the supervision of a professional probation assistant. Moreover, the said association promotes probation work by appropriate publications and imparts new ideas to magistrates and public prosecutors dealing with offences of juveniles, as well as to probation assistants. Henceforth, the association will deal particularly with the task of probation assistance for adult delinquents, too, and, being a central agency, it can be looked upon as a valuable support for the whole future development when the abovementioned amendments will have become effective.

GREECE*

I. The Anglo-Saxon institution of probation was introduced in Greece in 1911 and modified on the lines of the legislative provisions of France and Belgium, into a system of conditional suspension of punishment.

This institution has been preserved by the new Greek Penal Code according to which "If the accused has not previously received a sentence (other than a suspended sentence) involving deprivation of liberty for a crime or misdemeanour and is sentenced to imprisonment for less than one year, the court can provide in his sentence that the execution of the punishment inflicted be suspended for a fixed period stated in the sentence which must not be less than three years nor more than five" (Article 99 of the Penal Code).

The following Article of the Code provides that this "sursis" may be granted if the court considers that execution of the punishment is not essential to prevent the offender from committing further offences.

The grant of "sursis" is revoked if during the trial period the offender receives a further sentence, involving a deprivation of liberty, for a crime or misdemeanour.

The differences between the institution of "sursis" under these provisions and the Anglo-Saxon institution of probation are as follows:

1. It is not the determination of the sentence which is suspended but the execution of a sentence already imposed.

2. The person to whom the benefit of "sursis" is given is not subjected to any control or supervision.

3. The revocation of "sursis", and the consequential carrying out of the suspended sentence follow only upon a new sentence and cannot result from misbehaviour.

II. Probation can be said to be operative in Greece in the strict sense of the word so far as juvenile offenders are concerned. Article 122 of the Penal Code provides, among other reformative measures relating to offenders who were less than seventeen years of age at the time their offences were committed, that they may be placed under the supervision of an After-Care Society or of specialized case workers attached to Societies for the Protection of Children. Moreover, Article 124 of the Code enables the court at any time to replace any reformative measure which it has imposed by any other measure which it considers to be necessary.

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* Prepared by Char. Triandaphyllidis, Director-General of the Ministry of Justice, Athens.

Under these provisions and whatever the offence the court may, if it is satisfied by its examination of the character of the child that penal correction is not necessary to prevent him from committing further offences, place him under supervision in accordance with Article 122; and if the child fails to comply with the conditions imposed upon him or is shown to have been of bad behaviour the court can alter its decision and send him to a reformatory school.

In practice, this power to place juveniles under supervision is extensively used in Greece. Supervision is entrusted to the Societies for the Protection of Children, which are governed by the provision of the Law 2724 of 1940 and are attached to every court of first instance. These Societies have the services of officers whose function is the supervision of children. All members of the Societies are voluntary workers, including the case-workers, but a Bill was introduced last year which provides for the employment of officers at fixed salaries. This Bill has not to date been passed by the Chamber of Deputies.

III. Another measure comparable to "probation", as adapted to the legal system of the countries of continental Europe, is the Anglo-Saxon institution of conditional release, or parole, which was introduced to Greece in 1917 and is now governed by Articles 105 and 110 of the Penal Code. This, too, involves a suspension of punishment and the placing of the offender under supervision, but the suspension is partial since the offender must already have served part of his sentence. The argument sometimes put forward, that a difference between "sursis" and conditional release, lies in the one being a judicial and the other an administrative measure does not apply in Greek Law since under the provisions of the new Penal Code conditional release is formally endowed with a judicial character in conformity with the modern view that criminal process subsists until the sentence has been served.

Under Article 105 of the Penal Code, any offender may be released conditionally whatever the penalty imposed when he has served two-thirds of his sentence and provided he has served for at least a year or in the case of a sentence of imprisonment for life for at least twenty years. Requirements as to his manner of life and in particular as to his residence may be imposed upon a person conditionally released. Article 107 provides for recall of the released offender if he is of bad behaviour or fails to comply with the requirements. By Article 110 of the Code, he is subject to the supervision of After-Care Societies and of other competent authorities such as the police, the public prosecutor (parquet) and the local authority (commune). The grant of parole may be revoked on the application of an officer responsible for supervision. It is granted or revoked by the Court for the Area where the sentence is served.

IV. The conditional release of children is a much closer institution to that of probation. If the court considers that a juvenile delinquent, who at the time the offence was committed was aged between 13 and 17 years, is in need of penal correction, it can order him to be detained in a Corrective Institution for a period of from six months to twenty years. The minimum and maximum periods of this detention are fixed by the sentence.

Under Article 129 of the Penal Code the court can, in all cases, release the offender conditionally, provided he has been in the Corrective Institution for at least six months or for twelve months in the case of serious offences. Requirements concerning their way of life and education are imposed upon offenders so released, and they are placed under the supervision of Societies for Juvenile After-Care.

V. No concrete assessment of the results of "probation" of juveniles can be given because of the short time in which the institution has been in use in our country and moreover because of the lack of permanent and specialized officers competent to procure the required information.

ISRAEL*

Introduction

The probation system was introduced in this country by the Mandatory Government, at first in regard to juveniles (as a legal provision in 1933, as a direct government service in 1935), later (1944) also for adults. The probation service was a part of the Social Welfare Department; the same officers dealt with juveniles and adults.

Since the foundation of the State of Israel the probation service has been established as a department of the Ministry of Social Welfare. From 1948-1950 this department remained responsible for juvenile and adult probation; since 1 January 1951, a special section for adult probation has been built up within the Division for General Welfare of the same Ministry without organizational connexion with the Juvenile Probation Service. The latter became a part of the Child and Youth Welfare Division of the Ministry of Social Welfare.

This organizational position of the probation services within the Ministry of Social Welfare is not due to a mere accidental administrative measure, but is based on the principle that probation work represents a part of general social welfare activities and that the Juvenile Probation Service belongs necessarily to the social-educational services which fall within the responsibility of the State.

This attitude is a natural result of the case-work approach to the treatment of delinquents, notwithstanding the authoritative set-up constituted by the judicial proceedings.

The probation service in Israel (both for juveniles and adults) is a direct government service, administered by government officials appointed for this purpose according to legal provisions (appointments being published in the Official Gazette).

This arrangement is due mainly to the special conditions of this country and is not thought of as a necessary or even as the best solution of the problem in general. For the time being, local authorities do not contribute directly or on their own to probation or related activities, and, moreover, no private agencies or voluntary groups exist in this field.

The following survey is intended as a general one, but wherever it seems expedient, juvenile and adult probation are dealt with separately.

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* Prepared by E. Millo, Director of the Juvenile Probation Service, Jerusalem.

i. LEGAL PROVISION AND SCOPE OF APPLICATION

A. General

1. Legal basis:

Juvenile Offenders' Ordinance, 1937: covering all provisions concerning juvenile offenders, not limited to probation measures.

Probation of Offenders' Ordinance, 1944: dealing with all provisions concerning the probation system, both juveniles and adults (partly amending sections of the above-mentioned Juvenile Offenders' Ordinance).

Rules under the above-mentioned ordinances

2. Special problem

Notwithstanding differing details mentioned in the following report, we have to point out one important item affecting both juvenile and adult probation: The law enables the court to impose a probation order "considering the conditions concerning the offender or the offence" (in the case of juveniles "after getting information as to, etc.") In accordance with the above-mentioned rules, it is the duty of the probation officer to make investigations and provide information as required by the law or the court, but there is no legal provision which obliges the court to obtain the information from the probation officer or from any other specified source.

Accordingly a court may legally issue a probation order without consulting a probation officer. This hardly ever occurs with juveniles, but rather often with adults. An amendment of the law, closing this gap, has been requested by the probation services.

No probation order may be made without the acquiescence of the offender.

Special conditions, especially as to residence, may be inserted at the time of making the order or afterwards; they likewise may be cancelled or changed by the court under certain conditions, as circumstances demand.

Where a person has been released on probation, he will not be disqualified owing to his offence for the purposes of any enactment by which such disqualification is imposed upon convicted persons.

B. Details

1. Juveniles

Every juvenile aged 9-16 (girls up to 18) charged by the police with an offence is automatically referred to the probation office in the area concerned for social-psychological investigation before being brought before a court. (There are cases where the probation officers suggest to the police that they drop the case).

A probation officer also may bring a child (up to 16 years of age) to court as being in need of care and protection (according to specified circumstances defined by law).

2. Adults

Every court after having found an offender guilty of any offence - except one punishable with death - and considering the advisability of probation treatment, may call on a probation officer (for adults) for investigation and for his recommendation.

There are, however, cases, where a court is interested in an investigation only, without considering a probation order; there are also cases, where the Attorney General applies to the probation officer before the court hearing, for advice concerning the dropping of a case or defining a charge.

Suggestions are made in a recent penal law revision bill, for extending the application of a probation order to the following two cases:

(a) when combined with conditional sentence,

(b) for offenders to be released from prison on application to the court by a special Releases Committee, which recommends probation in place of continued imprisonment. (This would of course demand a considerable increase of probation officers.)

ii. THE FUNCTIONING OF THE COURT AND THE SELECTIVE PROCESS

A. General

According to the English legal system, prevailing in Israel's criminal procedure, the court procedure consists of two parts:

(1) fact finding and proof of guilt; and

(2) the pronouncement of sentence.

This system provides good facilities for the probation officer to make a thorough investigation in such cases as have been postponed for sentence. In Israel, the sentences in most cases are thus postponed after a finding of guilt.

It has, however, been stated above that the probation officer may start his investigation before the accused is found guilty and generally the juvenile probation officer adopts this method. From the aspect of probation work as a branch of social work this practice is more than justified, as the main question is whether and in what way the accused is in need of help and advice, even if he is not found guilty of the particular offence with which he is charged, and whether he should be transferred to the local social welfare bureau for assistance and treatment. The offence is thus considered as nothing but a possible symptom of social maladjustment.

The selection of cases for probation treatment is generally based on the probation officer's report and recommendation to the court.

Details of the system of investigation, in co-operation with psychological and psychiatric services, were the subject of the Brussels Seminar and have already been summarized in the Israel report to that Seminar.

It might, however, be stressed here that the probation officer's investigation never interferes with the police investigation concerning the facts and witnesses connected with the offence, but is focused on the social-psychological aspect of the offender - the details of the offence naturally being taken into account as data relevant for the characterization of the offender.

B. Details

1. Juveniles

A special permanent Juvenile Magistrate deals with juvenile offenders in a special room (in Tel Aviv in a building other than the regular court building). The prosecutor appears in civilian clothes and only the parties concerned are present. (Lawyers are admitted only by special permission of the court.) The general atmosphere is friendly and non-bureaucratic.

Most of the cases appearing before court have been known to one of the probation officers before, as at least one interview (intake) has generally taken place. Previous contact between the district probation officer and the prosecution office enables the latter to fix cases for the court hearing according to the special requirements of the cases.

In selecting cases for probation treatment, the court generally follows the probation officer's recommendation, although it is, of course, not legally bound to accept it.

The recommendation takes into account the offender's personality and home conditions (primarily the emotional relationship) without regard to the seriousness of the offence in question or to the fact of recidivism (a first offender may thus be recommended for institutional care and a recidivist for probation treatment).

2. Adults

As mentioned above, cases are generally referred to the probation officer (by writing or by telephone) for investigation and recommendation after the finding of guilt (often the offender is kept in custody during that period pending sentence).

The probation officer's attitude and method of investigation is similar to that of the juvenile probation officer, but there are some special problems:

(a) often the court makes a probation order without consulting the probation officer (see above);

(b) there are not infrequently cases in which the court tries to use probation in order to avoid imprisonment (lacking the legal provision for conditional sentence as yet), even if the probation officer does not think the offender fit for probation treatment; and

(c) the problem of confidentiality of the probation officer's report in respect of the parties (prosecutor and accused with his lawyer); this has been dealt with by the Brussels Seminar and is still legally unsolved, although in practice a kind of agreement has been reached and the confidentiality is mostly respected.

iii. PROBATIONARY SUPERVISION AND TREATMENT

A. General

The basic attitude is that of case-work approach: individual treatment with stress on the emotional contents of behaviour and treatment-measures within the total family set-up.

There are of course difficulties in carrying out these principles in their entirety because of the authoritative frame of the court procedure and in view of un-co-operative general public opinion (based on sentiments of revenge, punishment, deterrence etc.). The probation officers, however, maintain a firm attitude and regard it as a part of their task to propagate this approach and to contribute to the education of the public mind in this direction.

The lack of probation hostels (both for juveniles and adults) is very detrimental.

B. Details

1. Juveniles

Arrangements are made in order to realize the case-work approach i.e., to create the suitable intimate atmosphere and to pay sufficient attention to each individual case:

Each probation officer has his own room where he meets the probationer or members of his family undisturbed by administrative activities. The room is cheerfully equipped with suitable pictures on the walls, toys and play-material displayed on special small tables; a general library is at the disposal of all probationers; the waiting room is provided with illustrated and youth papers.

The individual treatment includes interviews with the child (on the average, once a week), his family and other persons concerned (teacher, club-leader, employer), regular home visits and any other activities advisable for the child's

benefit and treatment. The stress is laid more on common experiences (play, work, visits to places) than on intellectual talks; moral reproach, threats (court) and mere authoritative pressure are avoided.

Efforts are made to limit the case-load of each worker to 35-45 probation cases (according to the difficulty of cases and the number of new cases for investigation).

Where case-loads become too heavy, new investigations are postponed in order to ensure the proper treatment of probationers. At some places and during some periods this results in a waiting list of new cases, sometimes numbering up to 50 per cent of the cases on probation.

Co-operation exists with numerous agencies and authorities and efforts are made to ensure maximum co-ordination between those different factors, e.g., local authority (child welfare and general welfare), youth immigration department (young immigrants), youth employment bureau (agreement on special worker with individual approach and a financial contribution by the probation service), closed institutions (condition of residence), youth movements (placing youngsters in communal settlements' youth groups) and child guidance clinic (for special guidance in treatment of difficult cases, staff case meetings in which the clinic staff participates).

There is a special fund at the disposal of the probation officer for direct and indirect help as far as this is justified and needed by the treatment process: for private lessons and instruction, school equipment, club fees, tools, clothes, medical and psychotherapeutic treatment etc.

Experiments are about to be started in several cases to change the individual treatment by group education (by special workers in the probation office rooms).

Special difficulties are still found in dealing with backward, defective, psychotic and neurotic children, as special closed institutions are lacking, and ambulatory treatment or even suitable facilities for attendance by day only, are, in most cases, not available. Probation treatment is, in such cases, generally unsuitable or at least insufficient without subsidiary services.

2. Adults

The treatment is, in general, the same as for juveniles, though the educational aspect is stressed less than the social-therapeutic aspect.

The objective difficulties are here much more disturbing; there is a large number of unattached persons who are without home and sufficient means of subsistence, mostly untrained for any trade, unable and often unwilling to do unskilled work.

Useful contact has been established with the army authorities. This engenders mutual information and consideration of probation officers' special requests.

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The objective difficulties are here much more disturbing; there is a large number of unattached persons who are without home and sufficient means of subsistence, mostly untrained for any trade, unable and often unwilling to do unskilled work.

Useful contact has been established with the army authorities. This engenders mutual information and consideration of probation officers' special requests.

The care of families of adult probationers is transferred to the local Social Welfare Bureau.

There are no closed institutions for the younger cases (16-20 years of age), who, according to the present law, are dealt with as adult offenders, except for imprisonment.

iv. PERSONNEL

A. General

Professional social workers with practical experience in the field concerned are preferred, main stress being laid on personality.

About 50 per cent of the workers are females; the average age is 30-35 years of age.

B. Details

1. Juveniles

Because of the shortage of properly trained people, professional educationalists with special practical experience are accepted.

Psychological knowledge and training are desired. No special schools or courses for juvenile probation officers or child welfare officers exist at present.

There are schools and courses for training of general social workers; some of the students do their practical training in the juvenile probation service.

Efforts are made to make good the lack of knowledge and training of the new workers by close supervision and in-service training (in co-operation with child guidance clinics and private mental hygiene organizations).

2. Adults

The situation is similar to that of the juvenile probation service.

Besides social workers, people with legal training (lawyers, ex-magistrates of foreign countries) and practical experience in social-work activities are accepted.

Supervision is carried out by the Chief Probation Officer for adults and case meetings are held in co-operation with the Mental Hygiene Department of the Ministry of Health. A special course is planned in the future.

v. ORGANIZATION AND ADMINISTRATION

1. Juveniles

The Juvenile Probation Service is a department of the Division for Child and Youth Welfare in the Ministry of Social Welfare.

The country is divided into 3 districts, each headed by a district probation officer. Some districts are composed of sub-districts or areas, headed by area probation officers, responsible to the district probation officers concerned. (Some parts of the country are not yet covered by the service.)

At present there are 47 workers, of whom 15 are administrative and 32 professional, as follows:

1 Director
2 Assistant Directors (one Arab for the minorities)
3 District (supervising) Probation Officers
26 Probation Officers (fieldworkers) 3 of them Arabs

Total 32

6 additional probation officers are to be appointed within the next months, bringing the total of fieldworkers to 32 (at present there is a case-load of about 2,200 cases!).

Meetings

District meetings are held regularly once a week and devoted in turn to general matters of policy and administration or to case-analysis.

Permanent personal contact is maintained between the Director and the various districts and areas (generally once a month, by mutual visits).

Records and statistics

Central and district alphabetic register.

Chronological registration in every area.

Monthly statistics (with names of children and detailed items) are prepared by each worker and submitted to the Director.

The file contains a face-sheet and current interview recording.

Progress reports on probationers are sent to the Director twice a year (copy to court).

2. Adults

This service is a section of the Division for General Social Welfare in the Ministry of Social Welfare and as mentioned above has existed for about a year and a half. In order to learn the problems and stabilize the work, this service has intentionally been developed gradually.

It is operating in the three districts (including cities and rural areas) according to the areas of the 3 district courts.

At present there are 10 workers: 3 administrative and 7 professionals as follows:

1 Chief Probation Officer (supervising) for adults,

6 Probation Officers (fieldworkers, one of them an Arab),

5 additional probation officers are to be appointed within the current fiscal year, and also one additional administrative worker.

Meetings, records and statistics are introduced in a similar way to the juvenile probation service.

vi. ASSESSMENTS OF RESULTS

A. General

Notwithstanding the success or failure in individual cases, it may be stated here that in almost all cases the probation officer is accepted by the probationer and his family as a person sincerely interested in the probationer's welfare, as a friend giving advice and assistance and is never considered as an authoritative "tool" of the court.

B. Details

1. Juveniles

No detailed research, based on thorough case studies during a reasonable period, can be carried out as yet, owing to the lack of manpower and because of the different standards of work during the period prior to the establishment of the State.

In short it can be said:

1. About 40 per cent of juvenile offenders are put on probation.

2. The average period of probation treatment is 2-3 years, depending on the age of the probationer.

3. The main age groups are 12-16 (75 per cent of all cases), the highest percentage being the group aged 15 (25 per cent of all cases).

4. The percentage of female cases is about 18 per cent.

5. Of the probationers, about 40 per cent are pupils and about 30 per cent are working.

6. The main offences are committed against property (about 78 per cent).

7. From the aspect of diagnostic differentiation we may state:

Best results are obtained with children showing behaviour problems without serious psychic disorders; slight traits of neurotic disorders have not affected successful probation treatment, also mentally borderline cases could be dealt with successfully.

Good results were achieved by devoting special attention to child's parents (mainly mothers).

8. The special youth workshops are a great help, organized and supervised by a special department of the Ministry of Social Welfare.

Most cases of recidivism are due to the lack of closed institutions, of hostels and various subsidiary institutions (such as: special schools for mentally backward and defective children, playgrounds, clubs, community centres).

2. Adults

As this section has existed for only a year and a half (in some districts even less), assessments of results are hardly available.

130 cases were referred to the service and about 50 per cent were put on probation. About 40 additional cases were put on probation, without previous consultation with probation officer.

A steady increase of referrals is to be noted from month to month.

Most of the cases are in the age group of 16-20, followed by the group of 20-30 and only exceptional cases are aged above 30.

Ten cases had to be brought back to court for breach of conditions of the probation order.

Without going into further details it may be stated that during the short period of activity, the adult probation system has proved its high value and is well appreciated by courts of all categories as a way to shed light on the problem of delinquents and delinquency and to find a better solution than by mere punishment.

vii. PROSPECTS AND SUGGESTIONS FOR THE FUTURE

We see three main problems to be solved in the future:

1. The primary one is that of providing sufficient and thoroughly trained staff members. This includes fieldworkers and special case-work supervisors.

The measures to be taken and to be demanded are:

(a) provision in the government budget for additional posts,

(b) addition of a further (third) year of training in special fields, of child welfare and problem-child treatment at the existing School of Social Workers,

(c) systematic in-service training in co-operation with the child guidance clinics,

(d) sending experienced probation officers abroad for special training in case work, supervision, group-treatment, research work and social administration (fellowships and scholarships), and

(e) inviting experts in special fields from abroad.

2. A plan must be worked out to start the various subsidiary institutions and services mentioned above according to the preference of urgency and the available means and material.

3. Thorough amendments and revisions are to be carried out in the existing law, administering offenders' treatment, especially juveniles, e.g.:

Obligation of court to obtain a probation officer's report prior to sentence in every case of juveniles and in such cases of adults as are taken into account for a probation treatment.

Change of age limits for criminal responsibility and competence of juvenile courts (12-17 instead of 9-16).

New and wider provisions for children in need of care and protection and for children beyond control (where no provisions exist as yet).

Indeterminate sentence for institutional care, and several minor amendments.

ITALY *

1. Introductory remarks

In examining the question of the Probation System, it should be stated immediately that there is no system under Italian legislation exactly corresponding to that existing in some countries, particularly Britain, according to which - even in the case of an offence of some gravity - punishment may be replaced by a period of "probation under supervision", the latter to be carried out by specialized organizations and through rules calculated to bring about the complete rehabilitation of offenders.

Italian law however provides two systems (conditional suspension of punishment and conditional release) which may be said to have the same aims as Probation. In practice moreover, in the case of offenders who are under eighteen years of age, the Administration has resorted to a system of "assisted" freedom which undoubtedly has much in common with Probation.

It is consequently the object of this report to describe these three systems.

2. Conditional suspension of punishment

Italian law-makers have not failed to concern themselves with the distressing and often irreparable consequences likely to result from the actual enforcement of the penalty in the case of special groups of offenders, such as first offenders sentenced to short terms of imprisonment. In such cases the passing of the sentence, quite apart from its actual enforcement, is usually punishment enough and a decisive factor in avoiding relapses.

Consequently the penal code now in force provides for the suspension of the enforcement of the punishment, but - and this is the essential difference as compared with the probation system - during the period of suspension the offender is left completely free without any control or bond. It should be remarked, moreover, that the conditional suspension of the punishment is only granted if, after considering the gravity and nature of the offence and the personality of the offender, the judge considers that the offender will refrain from committing further offences. The assumption being that the offender will henceforth lead an honest life, any supervision or control would appear unnecessary not to say contradictory. As far as assistance is concerned, it can always be requested and obtained, when desirable, from the Care Organization for persons released from prison.

In compliance with this premise, Art. 163 of the Italian penal code, seeking to achieve the supreme object of a justice that is humane but not weak or over-prone to incautious indulgence, empowers judges to grant what is known as

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* Prepared by Carlo Erra, Magistrate of the Court of Appeal, Rome, and member of the Ministry of Justice.

the "conditional suspension of punishment" in the case of sentences of imprisonment or detention of up to one year, or, in the case of a fine which, either alone or associated with imprisonment would, if converted to a term of imprisonment on the scale provided by law, deprive the offender of his personal liberty for the abovementioned period of time. Still greater leniency, allowing "conditional suspension" of sentences of up to three years' imprisonment for offenders under eighteen years of age (Art. 20 of the Bill No. 1404 of 20 July 1934) or up to two years' imprisonment if the offender is over seventy years of age at the time of the offence, has been introduced. In the latter case it is considered expedient to show indulgence to persons who have reached such a ripe age without breaking the law and who, perhaps as a result of a weakening of their self-control due to old age, have no longer the strength to resist the influence of the various factors which lead to crime.

Under this power, the judge provides that the enforcement of a punishment shall be suspended for a period of five years if the sentence refers to a misdemeanour for a period of two years if it refers to a minor offence.

Italian law classifies this system among the causes of extinction of an offence since the suspension acts as a resolutive condition in as far as once the aforesaid period has been successfully completed, the offence together with the principal and accessory punishments is extinguished ex tunc and the right to punish is quashed.

However, the granting of this benefit is subject to certain limitations (Art. 164 of the penal code).

First of all, as has already been said, the judge must be able to assume that the offender will refrain from committing further offences. This means that the benefit is closely and definitely connected with the personality of the offender.

Further, the conditional suspension of punishment may not be granted to persons who have previously been sentenced for misdemeanours, even if they were subsequently rehabilitated, or to habitual, or professional criminals or criminals by natural inclination. The purpose of this latter provision is to avoid suspension being granted not only in connexion with crimes committed after the offender has been declared a habitual or professional criminal or a criminal by natural inclination, but also in connexion with such as lend themselves to a similar declaration.

Another case in which conditional suspension may not be granted is where the punishment imposed is coupled with a sentence of preventive detention, the law having assumed the offender to be a danger to the public. Since the granting of the benefit is based on the assumption that the offender will refrain from committing other offences, obviously the judge cannot make this assumption in cases in which the dangerous nature of the offender or the probability of his committing further offences (Art. 203 of the penal code) is assumed by the law. The two assumptions would be in open contradiction and of course the assumption of the law takes priority over the praesumptio hominis.

In any case the suspension of the penalty must be subject to the fulfilment of the obligation to return the stolen property, to pay the sum established for damages or temporarily allotted on account thereof, and to the publication of the sentence as reparation for the harm done (Art. 165 of the penal code). In no case, moreover, can it be granted more than once (Art. 164 of the penal code).

Once an offender has obtained conditional suspension of punishment, he is completely free for a period of "probation" without any bond, control or supervision. If the period of "probation" of five or two years passes without any of the causes for repeal - of which we shall speak farther on - occurring, the offence is extinguished and consequently the offender can no longer be subjected to any penalty in connexion therewith (Art. 167 of the penal code).

However, there are two grounds provided by the law for repeal of the suspension. These are: (1) the commission of another misdemeanour or of a lesser offence of similar character to the original, or failure by the offender to comply with the obligations imposed on him; (2) another sentence for a crime or misdemeanour committed previously or for a minor offence of the same nature as the original also committed previously (in the latter case of a sentence for a minor offence, however, the repeal is optional).

In any of the above circumstances the offender will have to undergo the whole of the punishment imposed on him.

The person empowered to grant conditional suspension of the penalty is the judge who passes the sentence and the two actions must be simultaneous. The person empowered to repeal the suspension according to the formalities inherent in its execution is the judge who passed the sentence, if there has been no subsequent sentence, (as would be the case in the event of the repeal being due to failure to fulfil the obligations imposed on the offender); otherwise the judge who passes the new sentence causing the repeal of the suspension will order the repeal if the latter has not already been provided for in the sentence itself (Art. 590 of the code of penal procedure).

The use of the system of conditional freedom is very wide indeed. Since it can be applied only in the case of first offenders and for trivial offences, the judges may be said, on the whole, to refuse this benefit very rarely when it is possible to grant it. This is proved by the most recent statistical data, which show 96,742 conditional suspensions out of 564,613 sentences in 1949 (including those for minor offence and for fines only) and 68,388 conditional suspensions out of 636,087 sentences in 1950.

No statistical data are available for repeals, but experience has shown that, in the great majority of cases, the period of supervision is completed successfully so that there is no repeal of the benefit.

3. Conditional release

Another system based upon somewhat the same principles as Probation is conditional release. It differs from Probation inasmuch as it is applied when a considerable part of the sentence has already been served, it is, nevertheless,

very similar in that it provides for the control and supervision of the prisoner conditionally released.

Art. 176 of the penal code, modified by subsequent regulations, provides that a prisoner, who has served half of his sentence, or at least three-quarters thereof in the case of a recidivist and who has consistently given proof of good behaviour, may be granted conditional release provided the remaining period of his sentence does not exceed five years.

The granting of this benefit is, moreover, subject to the fulfilment of the civil obligations arising from the offence committed, unless the offender is able to prove that it is quite impossible for him to fulfil them. It can in no case be granted if the prisoner, after serving his sentence, has to undergo a further period of preventive detention.

But the prisoner who is conditionally released is still subject to control and supervision; his situation is known in law as "supervised freedom". At the time of his release, the supervisory judge imposes upon the released prisoner, for the whole of the remaining period of his sentence, certain limitations of action which serve the dual purpose of testing the extent of his rehabilitation and of preventing relapses.

These limitations - which usually include the obligation to work at a steady job, not to come home after a certain hour, not to visit wine-shops or other premises where spirits are sold, not to associate with persons of dubious morality, etc. - are communicated to the police authorities entrusted with controlling the activities of the released prisoner (Art. 230, No. 2 of the penal code).

In addition to the police supervision, which, in addition to ascertaining whether the released prisoner violates the obligations imposed by the judge, also aims at assisting the former offender, there is the service carried on by the Care Organization for persons released from prison, the specific purpose of which is to grant the latter all the moral and material assistance they need in order to lead an honest life.

Prisoners conditionally released are thus assisted in every way to avoid relapses. If the remaining period of the sentence which the offender was due to have spent in prison, expires without his having relapsed from his good behaviour, the sentence is extinguished and the supervision comes to an end.

On the other hand the conditional release is repealed if, during the aforesaid period, the released prisoner commits a crime, misdemeanour or a lesser offence of the same nature or fails to comply with the obligations which govern his supervised freedom. In this case the period of conditional freedom enjoyed is not computed as part of the sentence. The offender is arrested and his punishment is resumed from the point at which it had been interrupted; nor is he any longer eligible for conditional release (Art. 177 of the penal code).

It should be added that in the case of persons who committed an offence when they were under eighteen years of age, conditional release - in compliance with

Art. 21 of the Decree No. 1404 of 20 July 1934 relating to the Juvenile Courts - may be granted at any stage of the sentence; it is sufficient that the enforcement of the latter has started. It is this possibility of granting conditional release to minors, even after serving a very short period of their sentences, that makes this system very similar to the Probation System.

Conditional release is granted by the Ministry of Justice, although this granting of a benefit by an administrative authority is a departure from its intrinsically judicial nature, as is moreover fully apparent in the provisions relating to competence to repeal this benefit. It is in fact the competent judicial authority that orders the repeal in compliance with the rules already mentioned in connexion with the conditional suspension of punishment.

Naturally, in view of the purposes of this system and of the conditions to which it is subject, the granting of conditional release cannot be very frequent. The latest statistics show the following figures: 1,506 conditional releases granted in 1949 and 474 in 1950. Repeals are rare.

4. "Assisted Freedom" for minors

The laws described above are those in force, but in the case of minors a social service absolutely identical to Probation has recently been added to them.

It has been provided by special ministerial circulars that when the Public Prosecutor or the Court considers that a minor is likely to benefit more from a system of training in the open than from the detention contemplated for the juridical category to which he belongs (prison, borstal, remand home), the juvenile delinquent is handed over to the district social service centre for the necessary supervision. His release is effected in compliance with the ordinary regulations which allow detention to be suspended or interrupted (conditional suspension of punishment, judicial pardon, provisional liberty, release from borstal, etc.) and the minor thus enjoys a state of assisted freedom.

The minor in this position is entrusted to a social worker, who keeps in constant touch with the youngster, either sending for him to come to his office or visiting him in his own home.

The essential task of the social worker is to advise and guide the youngster entrusted to him, taking steps to see that the necessary measures are adopted in his interests, assisting him to get vocational training and find employment and contacting and availing himself when necessary of the local welfare activities.

In most cases, moreover, free rehabilitation is most effective when the youngster realizes that he runs the risk of forfeiting this freedom at any moment if he shows that he is not benefitting from it. Sometimes the minor has to be made to comply with conditions that will help him to overcome the bad habits he had previously contracted and it is for this reason that it has been held advisable not to loosen completely the juridical bond existing between the youngster and the authority responsible for him when he was under detention. It is for this reason that, in using the special legal measures provided in the above-mentioned Decree on juvenile courts, this freedom is always granted

temporarily and experimentally and steps may consequently be taken at any moment to send the minor back to the institution should it be found at a certain point that detention is the only system for obtaining his rehabilitation.

District social service centres have been instituted in each of the 22 districts of the Court of Appeal where there are also Juvenile Courts.

For the present, however, owing to financial difficulties, it has only been possible to organize centres in some districts. In the others their institution is under way and it is hoped that it will be possible gradually to complete their organization in a relatively short time.

The district centres are subordinate to the Ministry of Justice (Prevention and Punishment Department), where there is a Juvenile Social Service Office.

The work of the district centres is carried on by specially qualified, professionally trained personnel with academic qualifications in social science, who are employees of the Ministry of Justice (Prevention and Punishment Department).

Although the district centres have only recently been founded, a number of youngsters have already been assisted by them either in their own homes or, in small educational groups where the families did not give sufficient guarantee of discipline and morality. Despite the difficulties always connected with the establishment of new forms of assistance, the successful results obtained have undoubtedly been considerable and are certainly a reliable guarantee for the further development of this system.

LUXEMBOURG[1/]

I. Legal provisions and field of application

A. Suspension of proceedings and suspension of judgment

Probation in the form of suspension of proceedings or suspension of judgment is unknown to Luxembourg law. Nor is it recognized in practice. It is true that by a circular issued by the Procureur Général d'Etat on 29 August 1902[2/], the public prosecutors (parquets) may be authorized in exceptional circumstances to take no action in certain cases, but no conditions are attached when a case is pigeon-holed in this way, and the disposal amounts to no more than the abandonment of the prosecution.

B. Suspension of the execution of punishmert

Suspension of the execution of punishment is recognized by the law of 10 May 1892 governing the conditional sentence. It can be granted in cases dealt with by the middle and lower courts, when sentence is passed, provided that the offender has not received one or more previous sentences of which the total exceeds the normal maximum term of imprisonment which a lower court may impose.

After declaring the "sursis" the president of the court or tribunal must warn the offender that if, in the five years next ensuing (or two years if the sentence was imposed by a lower court) he is sentenced to one or more terms of imprisonment of which the total exceeds the normal maximum which a lower court may impose, the original punishment will be executed without affecting that later imposed, and that the penalties for recidivism will be incurred.

The sentence is inscribed in the offenders' criminal dossier with a note of the suspension granted. If the suspension has not been rendered void by one or more further sentences within the respective periods of five and two years, the punishment is finally remitted and the conviction can no longer be included in any extracts supplied to a private person.

C. Provisional release

Under the provision of Article 100 of the Penal Code, those sentenced to a fixed term of forced labour or detention, to solitary confinement, or to imprisonment for more than one year may, when they have served three-quarters of

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1/ Prepared by Ferdinand Weiler, Governmental Legal Adviser, Commissioner of Custodial Institutions, Ministry of Justice, Luxembourg.

2/ Fred Gillissen, Alphabetic and analytical collection of circulars, instructions, and notices concerning the administration of justice, published by the Department of Justice, Luxembourg, 1936, p.145.

their sentences, be provisionally released by the Government. This privilege may be revoked for misbehaviour or for failure to comply with the requirements attached to the release, and if it is revoked the offender serves the remainder of his sentence. If it is not revoked before the full period of the sentence expires, the offender is absolutely free.

The administration of Article 108 of the Penal Code is primarily regulated by a ministerial instruction of 3 February 1882[3], which prescribes among other things that the general conditions of provisional release shall be as follows:

(1) That the offender lead a regular and industrious life.

(2) That he return to the place in which he has declared his wish to reside, following the directions given in the itinerary supplied to him.

(3) That he does not leave the territory of the Grand-Duchy without permission of the Minister of Justice.

(4) That he does not change his residence within the country, or even leave his usual place of abode for more than forty-eight hours, without first notifying the burgomaster of his commune and, on arrival at his new residence or temporary place of abode, the burgomaster for this latter locality.

In case of necessity the burgomaster for the area where the released offender has his residence, or in his absence the Procureur d'Etat, may order his provisional arrest pending a decision by the Government. If an order of revocation is made it dates back to the day of arrest.

D. Suspension of punishment

The circulars issued by the Procureur Général d'Etat on 18 May 1907, 27 October 1910 and 23 November 1921[4] permit the suspension of a sentence involving deprivation of liberty when the offender has served half the sentence. Those concerned are advised that their punishment has not been remitted, that its execution is only suspended, and that they are liable to be imprisoned again if their conduct gives rise to the least unfavourable criticism or if they do not scrupulously observe the conditions attached to the privilege they have been granted. Among these conditions should be mentioned the obligation to inform the police or the public prosecutor (Parquet Général) of any projected change of residence.

The remainder of the sentence remains suspended until it is annulled by prescription, the period of prescription running from the date of the suspension.

3/ Gillissen, op.cit., p.180

4/ Gillissen, op.cit., p.180

E. Juvenile delinquency

The law of 2 August 1939 on the Protection of Children fixes the age of penal adult responsibility at eighteen years. For the more serious offences (and in the case of repeated offenders for minor offences too) persons of eighteen years of age are brought before a Juvenile Court which, in place of any penal sanction, takes one or other of the following courses for their care, protection, and training: reprimand; supervised freedom (liberté surveillée); requirement to reside with an individual or in an institution; placing at the Government's disposal. The Juvenile Court may take the same steps with regard to minors of less than eighteen years who engage in immoral practices, who seek their living at gambling or in pursuits or occupations which expose them to prostitution, begging, vagrancy or crime, or who are persistent truants; and with regard to minors of less than twenty-one years of age who through misconduct or unruly behaviour are the cause of serious trouble to their parents or guardians.

The Juvenile Court may at any time cancel or modify the action taken either on its own initiative, at the instance of the Public Prosecutor's Department, the child itself or its parents or guardian, on the report of a Child Care Officer; and within the limits of the law may take whatever other action is in the best interests of the child. All decisions are reviewed every three years if they have not become ineffective in the meantime.

When the Juvenile Court places a child brought before it at the disposal of the Government it may do so conditionally and the conditions attached to the suspension must be specified.

The Findings of the Juvenile Court are not entered in the criminal dossier but are brought to the notice of the appropriate judicial authority in the event of further proceedings.

II. Operation of the law and selection procedure

Suspension of the execution of punishment is generally accorded by the middle and lower courts to first offenders who appear reformed or capable of reformation before the sentence is pronounced. Courts are guided in this matter by their intuition and their appreciation of all the factors involved.

Provisional release under Article 108 of the Penal Code, which is subject to a Government decision, is generally regarded as too cumbrous and slow a procedure to be of regular application and is now very rarely used. Recourse is almost always had to the more flexible method of suspension of punishment which takes place at the behest of the central office of the public prosecutor or of the prosecutors attached to local courts.

A case for early release is the subject of a preliminary enquiry before the Commission of the Institute of Social Defence, created by ministerial decree on 31 January 1950. The Commission, having regard to the medical and social information at its disposal and to the criminal and prison record, makes detailed recommendations either in support of the early release or of the continuation of the imprisonment. In recent years releases have not been granted before three-quarters of the sentence has expired.

The law of 2 August 1939 requires a Children's Judge to enquire into the physical and mental condition of children brought before him as well as into the social conditions in which they live. He may, either directly or through Child Care Officers, consult local authorities, ministers of religion, family doctors, schoolmasters, past or present employers, representatives of organizations who have taken an interest in the children, or any other persons who can give helpful information. If he is in doubt about the physical or mental condition of the child he can place him under observation and require him to undergo medical examination by one or more specialists.

III. Probationary supervision and treatment

Suspension of the execution of punishment is not accompanied by any probationary treatment or control other than that the offender lives under the psychological threat of the withdrawal of the "sursis", and of the additional penalties for recidivism, in the event of a further conviction during the period provided by law.

In the case of provisional release under Article 100 of the Penal Code, the ministerial instruction of 3 February, 1882, to which reference has already been made, provides for the local authority and for the national or local police force to supervise the conduct of the released offender and to see that he performs the duties imposed upon him. They are required to avoid carrying out this supervision in such a way as to cause embarrassment to the offender or bring him into public disrepute and they must bring to the notice of the Procureur d'Etat, for his consideration, any circumstance suggesting a disregard by the offender of his duties. In particular this official must be apprised if the offender becomes addicted to drink, fails to lead an industrious life, or associates with undesirable companions. In any event officers in charge of police stations make a monthly report to the Procureurs d'Etat on the released prisoners in their districts.

The above-quoted circulars of the Procureur d'Etat dated 18 May 1907, 27 October 1910 and 23 November 1921 provide that when the performance of the sentence has been suspended under those circulars, supervision shall be exercised by the national and local police forces. It falls to the national police to check that the offender gives the notices of arrival and departure which he is required to furnish both upon his discharge and when he changes his residence. The local police have the duty of informing the public prosecutor of any breach of the conditions of discharge, namely any discreditable circumstances or misconduct which might necessitate withdrawal of the grant of release.

With regard to juveniles subject to "surveillée liberté" ("supervised freedom") the Law of 2 August 1939 provides for the Juvenile Court to designate persons of both sexes as Child Care Officers. It chooses these for preference from among the members of societies for the protection of children or of public or voluntary welfare or training organizations, and they are required, under the Court's direction, to keep in touch with the children and with their parents or other individuals, organizations or institutions responsible for their care. The Child Care Officers keep a watch upon the environment, habits, and conduct of the children and report to the Juvenile Court as often as they deem it expedient,

and at least once a month, upon their moral and material well-being. They suggest to the Court any measures which they consider to be in the children's interest. Parents are furnished with periodic reports on their children's progress.

IV. Personnel, organization and administration of the Probation Service

The Second World War which resulted in the occupation of the Grand-Duchy of Luxembourg by German troops and its virtual annexation by the Third Reich disorganized Luxembourg's national institutions and halted their operation. The post-war years permitted a gradual return to normality and even improvements in some directions. Thus regard has been had to the need for a more progressive replacement of the concept of punishment as retribution by that of measures aiming at reformation, moral recovery, and social rehabilitation and, in cases beyond reform, by that of detention in the interest of public security. The creation of the Institute of Social Defence by the ministerial decree of 31 January 1950 constitutes a landmark in this development, and it was probably to give the Institute greater scope that the old laws of provisional release and the suspension of punishment were allowed to fall to some extent into desuetude in the post-war years - all the more readily because of the regrettable failures which had resulted from time to time under these institutions from the lack of supervisory personnel equipped for this most delicate of tasks.

As stated above early releases are usually granted at present by the Public Prosecutor, on the advice of the Institute of Social Defence, when three-quarters of the punishment has been served. The supervision of released prisoners takes the form in theory of after-care by the National Committee for the Prevention of Crime and Delinquency, a private organization functioning under the aegis of the Ministry of Justice and receiving financial aid from the State and local authorities. The limited resources of this organization have not, however, so far permitted it to function on a considerable scale and in point of fact the Grand-Duchy of Luxembourg does not at present possess a true probation service with the concomitant personnel, organization, and administrative machine.

The system "liberté surveillée" for children functions with the aid of qualified social workers from among the Child Care Officers and, in the most important centres of population, of police officers who are specially trained for the work. These agents supervise as individuals under the direction of the Juvenile Court.

V. Evaluation of results obtained

Despite the temporary deficiency in the Grand-Duchy of Luxembourg of probationary supervision for adult offenders who are granted an early release, it must be recognized that the Institute of Social Defence and the National Committee for the Prevention of Crime and Delinquency have proved themselves and performed their tasks within the limits of their resources. For if there has been no appreciable fall till now in the number of cases of breach it must be stated that recidivism is extremely rare among the former prisoners with whom the two organizations are concerned.

It is therefore proposed to carry out a fundamental reform of the Institute of Social Defence, with an increase in its resources, within the framework of a general reform of prison and reformatory administration and organization which is at present under consideration, and of which the text will probably be published during the present year.

In addition a social defence Bill is on the point of completion which provides among other things for certain abnormal offenders to be placed on probation and for the creation of specialized agencies for their supervision.

Further changes in Luxembourg law to provide for the introduction of probation in the form of suspension of proceedings or suspension of judgment, as well as the setting-up of the appropriate machinery for supervision may possibly result from the lessons gained at the Seminar.

NETHERLANDS[1/]

The organization of probation and its incorporation into the penal system of the Netherlands have been described in detail in the United Nations publication Probation and Related Measures (1951). In these notes it will therefore suffice to sketch the principal features of the social-rehabilitation services (reclassering) in the Netherlands, and to show how these services have developed into an integral part of the administration of justice and have attained an independent place within the framework of social welfare.

A. SCOPE

The actual scope of the rehabilitation services of the Netherlands is apparent from the following outline of functions performed:

(1) In 1950, 8,940 pre-sentence reports were prepared, by approximately 120 officials, for use in the administration of justice. This figure is equivalent to 25.5 per cent of all accused persons sentenced in the district courts in 1950 (a total of 35,129, of whom 20,469 were sentenced to fines).

(2) In 1950, 1,685 reports on home environment were prepared in preparation for the release of persons from prisons and other penal institutions on parole.

(3) In 1950, supervision was carried out in the following categories of cases:

Probationers	11,023[2/]
Persons on parole	1,833[2/]
Mentally unstable offenders conditionally placed at the disposal of the Government for a certain period, or conditionally discharged	948
Persons conditionally reprieved by the Queen	681

Persons conditionally not prosecuted (only a small number).

1/ For a more detailed study, reference is made to a publication by Dr. N. Muller, Rehabilitation Work in the Netherlands (The Hague: National Bureau voor Reclassering, 1950).

2/ For an appreciation of these figures, it should be mentioned that the Netherlands has a population of 10,200,280. The average prison and gaol population in 1950 was 4,500 sentenced offenders and 2,000 persons awaiting trial.

(4) The functions of the service also included the visiting of prisoners and maintaining contact with their families; and

(5) The maintenance of institutions with a total capacity of over 400 probationers and parolees, who are trained for orderly living and regular work and, if possible, taught a trade.

B. REHABILITATION WORK AS A JOINT TASK OF THE GOVERNMENT AND THE PEOPLE

According to the law, rehabilitation work is primarily a task of private organizations, although the responsibility for general supervision and inspection rests with the State. It is the general feeling in the Netherlands that this arrangement is of great practical importance. For effective rehabilitation work - the treatment of offenders in free society - it is essentail that the offender should again be absorbed into the social life of his former environment, and this can best be promoted by someone from the same district, village or street who, as a working member of a private organization, exercises supervision in the sense of rendering assistance and showing sympathetic understanding. Such a person should preferably be someone with whom the offender may feel allied as a result of a common philosophy and outlook on life - a consideration of particular importance in view of the religious situation in the Netherlands.

The participation of the government in rehabilitation work is, in principle, limited to:

(1) the making of regulations bearing on the co-operation between the approved rehabilitation organizations and the organs for the administration of justice;

(2) the imposition of conditions on organizations wanting to be admitted as approved rehabilitation organizations;

(3) the subsidization of approved rehabilitation organizations (the subsidy amounting to 90 per cent of the cost of salaries of probation officers employed by these organizations); and

(4) the exercise of general supervision over the activities of approved organizations and the encouragement of close co-operation with the judiciary.

In this connexion, two outstanding advantages of the use of private organizations may be pointed out:

(a) The offender's confidence in the probation officer will be greater if the latter is not an officer of the law, so that pre-sentence reports are submitted to the court by a person independent of the organs of the administration of justice.3/

3/ Prof. M.P. Vrij deals with this subject in greater detail in "Quelques principes concernant l'information du juge sur l'inculpé", in Revue de droit pénal et de criminologie, 32nd year, 1951, No. 3, December, pp. 223-239.

(b) Supervision exercised by private organizations will be advantageous to the case-work relationship by virtue of the fact that the officers of such organizations do not exercise functions which are directly official.

C. CO-OPERATION BETWEEN VOLUNTARY AND FULL-TIME WORKERS

One of the fundamental principles of the social-rehabilitation services of the Netherlands is that supervision is entrusted to a large number of carefully selected voluntary workers who receive some special training and who carry out their duties under the guidance of well-trained full-time officials (at present numbering 160). Pre-sentence reports and reports on home environment should, on the other hand, be prepared exclusively by trained officials.

The principles of case work are already beginning to influence the way in which supervision is exercised. It is felt, however, that rehabilitation work would suffer if it were entrusted exclusively to official case workers, who are necessarily restricted in number and who often live far away from the persons supervised.

D. THE TRAINING OF PROFESSIONAL PROBATION OFFICERS

In the Netherlands, equal importance is being attached to the co-operation of a large number of volunteers and to having available a sufficient number of fully trained probation officers.

The appointment of probation officers by the private organizations - which must themselves be approved by the Minister - takes place subject to certain conditions, viz.,

(1) The appointment of a probation officer by a private organization requires the approval of the Minister of Justice who will, inter alia, impose the following conditions or desiderata:

(a) that the person appointed should hold a certificate from a school of social work or, at least, should both have a secondary school certificate and practical experience in social work;

(b) that the person appointed should be at least 25 years of age;

(c) that the appointment should be based on a psycho-technical examination of aptitude.

(2) Appointment is made on trial. All appointees are given a period of instruction in practical work under experienced probation officers which lasts at least three months. When an appointment is made permanent - after at least service during one year - the officer is given in-service training

over a period of two years; this consists of a special course at a university extension for probation officers which takes up one full day every fortnight. This course, which was established only three years ago, is already beginning to show results in the form of an improvement in practical work.

Training at a school of social work prior to employment as a probation officer is considered to be of such importance that the State has made provision for scholarships for suitable persons who undertake to accept employment as probation officers for a period of at least five years following training.

Fair remuneration and a sound legal status are also considered to be essential for the formation of a body of really capable probation officers. These officers, although in the majority of cases employed by private organizations, receive state pensions. Probation officers belong to the best paid group of social workers in the country.

E. PUBLIC EDUCATION

For efficient rehabilitation work it is essential that the general public and the government should both be imbued with the spirit of rehabilitation. If an offender meets with misunderstanding on the part of the general public or of the government, his well-intended efforts may be frustrated.

In order to pervade the whole population with the spirit of rehabilitation, it is considered to be of major importance that the work should be entrusted to private organizations which carry out their task with the help of large numbers of committee members and voluntary workers (in the Netherlands more than 7,000 volunteers are co-operating). A further means of attaining this objective is the holding of an annual "Rehabilitation Day" (Reclasseringsdag) when a street and house-to-house collection is conducted jointly by the private organizations concerned; this yields an amount of approximately 200,000 guilders annually. The fund-raising activities of "Rehabilitation Day" are combined with a well-directed campaign of public education conducted by the press, radio and film, and special religious services and meetings, so that this annual event goes a long way towards popularizing the rehabilitation movement.

With a view to the development of interest in, as well as the effectiveness of, rehabilitation work, the Government has created "Rehabilitation Councils" (Reclasseringsraden) in all centres where courts are established. Each of these councils is composed of a judge, an official of the public ministry, the governor of a prison, a forensic psychiatrist (where possible), and several representatives of the private rehabilitation organizations. These councils are intended to promote co-operation between the judiciary and the rehabilitation organizations, as well as between the rehabilitation organizations themselves; in addition, they exercise general supervision over the work of the rehabilitation organizations in each area.

F. SPECIALIZATION OF REHABILITATION WORK ACCORDING TO SPECIAL GROUPS OF OFFENDERS

Each of various groups of offenders presents special problems, and the work of the organizations interested in the rehabilitation of offenders belonging to specific categories therefore also involves special problems and requires special knowledge, organizational devices and methods. When this was realized, the development of rehabilitation work in the Netherlands was bound to be in the direction of specialization or functional differentiation:

(a) Children and juveniles (up to 18 years of age) are dealt with by an independent private organization which falls outside the scope of the present discussion.

(b) Young offenders (of 18 to approximately 24 years of age) are beginning to be regarded as a separate group who are dealt with according to their particular needs within the framework of the existing rehabilitation services for adults.

(c) Alcoholic offenders are frequently treated by organizations for alcoholics which are specially organized for team work between the social worker, the psychiatrist and the doctor, and which co-operate closely with abstinence societies and Alcoholics Anonymous groups.4/

(d) In the case of mentally disturbed offenders, the work of the psychiatrist is, of course, of the utmost importance. He should be assisted by psychiatric social workers or by specially qualified voluntary workers.5/

G. PRISON VISITING

Prison visiting by volunteers from the private organizations has been practised in the Netherlands for more than a century and a quarter. It has no longer the same, nor as great, importance as formerly. After the completion of the reform of the Netherlands prison system, now under way, these visits will, however, retain their value because it is of great importance for prisoners to come in contact with persons entirely outside the prison system and because it makes prisoners feel that there is still a link between themselves and free society.

H. TREATMENT IN PRIVATE INSTITUTIONS IN PREPARATION FOR PROBATION

Some persons are not fit for probation - at least not immediately - because they have led too irregular a life for too long a time, or they are not fit for

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4/ In almost every court district an approved organization for the rehabilitation of alcoholic offenders has created a special bureau with the above-described staff.

5/ One rehabilitation organization is working in this particular field along these ideas with divisions in every court district.

probation in their own milieu because it is too bad and would therefore counteract any guidance given to them. For such people, institutions are required in which they may be placed temporarily, sometimes to accustom them to regular work, sometimes to shelter them until suitable lodgings have been found, and sometimes to give them vocational training.

Offenders are placed in these institutions either on parole to ensure gradual transition to life in society, or as probationers under a sentence containing - following a suggestion contained in a pre-sentence report and accepted by the accused - the condition of temporary institutional treatment. If the delinquent absconds, he fails to comply with the condition imposed, so that as a rule the conditional sentence of imprisonment will become effective. If such institutions were not available, the judge would often have to impose ordinary unconditional imprisonment.6/

These institutions formerly existed only for those who, under the provisions of the criminal law, were minors or vagrants. Of late, such institutions have also been created for various special groups of offenders - for mentally disordered young women, for mentally defective women, for problem offenders of 18 to 23 years of age, for elderly men, and for mentally defective men. The organization of these institutions is constantly improving; as a rule the personnel includes a psychiatrist, a psychologist and a social worker.

I. CONDITIONAL SENTENCES WITHOUT SUPERVISION

In the Netherlands it is possible to suspend conditionally the execution of sentences of imprisonment without requiring the offender to be under supervision. In such a case the main condition is that the offender shall not commit any new offence and shall not misbehave. This prevents unnecessary supervision. This is, however, the exception, the rule in sound practice being that suspension should be supplemented by non-institutional treatment in the form of supervision.

J. AMENDMENT OF THE LAW

The combination of a partly conditional with a partly unconditional sentence in Netherlands law was discussed in Probation and Related Measures (pp.164-165). Since the publication of this work, the relevant provision of the law (section 14-a of the Penal Code) has been amended. The principal object of this amendment was to widen the use of sentences combining conditional and unconditional penalties or accessory penalties. A widening of the statutory scope of the application of probation shows the satisfaction of the legislators with the application thus far of the system of probation and social rehabilitation.

6/ Sub A(5) above, some figures are given about the scope of this development in the Netherlands.

NORWAY

Probation and related measures in Norway are described in Chapter 10 of the United Nations publication on "Probation and Related Measures".1/ In the period since the appearance of this publication, no reform concerning the legal provisions or the administration of these measures has been carried out, although steps have been taken to this end. A reform committee has, since March 1951, had on its agenda among other items new legal provisions concerning probation and related measures.

Tables 17, 18, 19 and 20 below give more recent information than the corresponding tables in Chapter 10.

Table 17

The extent of the use of the suspension of prosecution in Norway, 1939, 1949, 1950.

	Age group			
	Under 21	21-25	Over 25	Total
1939:				
Offenders, known to have committed punishable offences	1,419	823	2,774	5,016
Offenders, proceedings against whom were suspended	816	104	131	1,051
Percentage of cases in which proceedings were suspended	57.5	12.6	4.7	21
1949:				
Offenders, known to have committed punishable offences	1,034	759	2,700	4,493
Offenders, proceedings against whom were suspended	634	96	190	920
Percentage of cases in which proceedings were suspended	61.3	12.6	7.0	20.5
1950:				
Offenders, known to have committed punishable offences	955	729	2,472	4,156
Offenders, proceedings against whom were suspended	603	136	193	932
Percentage of cases in which proceedings were suspended	63.1	18.7	7.8	22.4

1/ New York: United Nations, 1951, 407 pp.

Table 18

Extent of use of conditional sentence (expressed as percentage) and all sentences on imprisonment in the case of first offenders, Norway.

Period	Total	Imprisonment of 90 days or less	Imprisonment of more than 90 days - 6 months	Imprisonment of more than 6 months - 1 year
1927-28	64.3	75.1		
1929-30	72.0			
1931-32	72.2			
1933-34	77.6	82.6	59.3	61.8
1935-36	77.4	83.8	61.9	57.8
1937-38	78.1	83.5	67.8	64.7
1939-40	76.1	81.5	65.5	52.6
1941-42	74.0	80.1	62.3	53.4
1943-44	48.4	59.3	37.5	29.0
1945-46	68.6	78.3	54.6	38.6
1947-48	74.0	81.2	62.3	56.8
1949-50	76.8	83.2	73.7	60.3

Table 19

Extent of use of probationary supervision with conditional sentence, Norway.

	Total number of conditional sentences				Total number of conditional sentences under the age of 21			
Period	Total	With super-vision	Without super-vision	Percent with super-vision	Total	With super-vision	Without super-vision	Percent with super-vision
1930-31	2,691	614	2,077	23	713	390	323	55
1932-33	2,851	461	2,390	16	720	310	410	43
1934-35	2,636	382	2,254	14	569	250	319	44
1946-47	4,081	331	3,750	8	589	184	405	31

Table 20

Extent of recidivism and failure to comply with requirements of conditional sentence during trial period, male offenders, Norway, 1920-1947.

Percentage of offenders subject to conditional sentence

Period	Offenders who committed offences during period of suspension, and punished with imprisonment			Offenders who failed to comply with requirements		
	Total	Under 21 years of age	Over 21 years of age	Total	Under 21 years of age	Over 21 years of age
1920-21	14.6	20.6	10.6	15.0	21.0	10.9
1928-29	16.1			19.6		
1930-31	15.4	24.7	11.9	21.0	31.1	17.2
1932-33	17.6	29.0	13.6	21.1	33.3	16.7
1934-35	15.9	25.5	13.0	19.6	29.6	16.6
1946-47	10.2	18.5	8.7	13.3	21.7	11.8

SWITZERLAND

Does Switzerland possess a system of probation, the measure applied to certain specially chosen offenders which permits the suspension of punishment for an experimental period while the offender is placed under the supervision of a suitable person who is responsible for his guidance and for carrying out the treatment appropriate to his case?

In replying to this question it will be convenient to consider separately the position of adults (those who have completed their eighteenth year) and juveniles (six to eighteen years).

A. Probation of adults

1. Legislation

In common with that of most European countries Swiss legislation (the Penal Code of 1937, Article 41) has provided for the carrying out of a sentence to be suspended ("sursis"). At first the primary object was to discourage short sentences of imprisonment and avoid, as much as possible, the corruptive influence of prison. But this negative aspect of "sursis" was soon replaced by a positive view: the suspension came to be regarded as a means of self-discipline calculated to prevent recidivism, the offender being encouraged to be of good behaviour by the promise of a remission of punishment. At the same time, experience having shown that some of those concerned need guidance and assistance in their efforts at self-discipline, the Legislature did not fail to make the necessary provision by empowering the judge who grants the suspension to place the offender under supervision, a system to which further reference will be made in due course.

In short, suspension of the carrying out of a sentence may serve equally well as an exercise of clemency, a caution, or a measure of probation according to the particular needs of each offender.

2. Scope

To benefit from "sursis" the offender must fulfil four conditions:

(a) He must not be liable to a penalty exceeding one year's imprisonment, this excluding suspension of a sentence to imprisonment with hard labour.

(b) His criminal record in the five years preceding the commission of the offence must show no sentence involving deprivation of liberty, either in Switzerland or abroad, for a deliberate crime or misdemeanour.

(c) Within the limit of his means the offender must have made good "the damage determined by the court or by agreement with the injured party".

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(d) Finally when the character and antecedents of the offender are considered "sursis" must appear the most likely means of preventing the commission of further offences.

3. Role of the court and selection of offenders

The Federal Court has regarded "sursis" not as an exercise of clemency by the court, which might be compared with judicial pardon, but as an institution which aims at guiding the deserving offender towards social rehabilitation. Proceeding from this view the federal judges have not given the courts an absolute discretion in the grant of "sursis": as soon as the question of preventing recidivism arises the magistrate has a duty to consider the use of "sursis" and he is not entitled to refuse it arbitrarily.

It follows that "sursis" is very extensively used: in 1950 out of 19,453 offenders, of whom 9,369 were recidivists, 7,694 were granted the benefit of it. As has already been indicated, however, the court must act on the merits of each particular case and has three different courses at its disposal:

(a) The court can confine itself to suspending the carrying out of the sentence for a trial period of between two and five years, in the case of crimes or misdemeanours, or of only one year in the case of minor offences. The offender is required to be of good behaviour in a strictly legal sense, that is he must not be guilty of a further deliberate breach of the law. (Simple "sursis").

(b) The court may suspend the carrying out of a sentence subject to the observation of rules of conduct which it imposes, having regard to the character of the offender, to deter him from further crime. The law gives as examples of such rules the obligation to learn a trade, to reside in a stipulated place and to abstain from alcoholic drink. The "sursis" consequently takes the form of a measure of self discipline (conditional "sursis").

(c) Finally, whether or not rules of conduct have been stipulated the court can place under guidance ("patronage") the offender in whose case a suspension has been granted. This entails the use of an agency dedicated to the assistance and discreet supervision of offenders, and hence a system of supervised freedom ("sursis", subject to supervision).

In providing these three possibilities the law does not prescribe the circumstances in which one course rather than another should be adopted by the court. When it grants a suspension the court is free to choose the measure which it deems appropriate to the particular case and the character of the offender, and in this it is usually guided by the means described in the Swiss report on the subjects studied at the European Seminar held in Brussels.

The court is not, moreover, only empowered to resort to probation ("sursis" subject to supervision) at the time it pronounces sentence. It seems that since the law of 5 October 1950 it is equally possible to use this measure, in preference

SWITZERLAND

Does Switzerland possess a system of probation, the measure applied to certain specially chosen offenders which permits the suspension of punishment for an experimental period while the offender is placed under the supervision of a suitable person who is responsible for his guidance and for carrying out the treatment appropriate to his case?

In replying to this question it will be convenient to consider separately the position of adults (those who have completed their eighteenth year) and juveniles (six to eighteen years).

A. Probation of adults

1. Legislation

In common with that of most European countries Swiss legislation (the Penal Code of 1937, Article 41) has provided for the carrying out of a sentence to be suspended ("sursis"). At first the primary object was to discourage short sentences of imprisonment and avoid, as much as possible, the corruptive influence of prison. But this negative aspect of "sursis" was soon replaced by a positive view: the suspension came to be regarded as a means of self-discipline calculated to prevent recidivism, the offender being encouraged to be of good behaviour by the promise of a remission of punishment. At the same time, experience having shown that some of those concerned need guidance and assistance in their efforts at self-discipline, the Legislature did not fail to make the necessary provision by empowering the judge who grants the suspension to place the offender under supervision, a system to which further reference will be made in due course.

In short, suspension of the carrying out of a sentence may serve equally well as an exercise of clemency, a caution, or a measure of probation according to the particular needs of each offender.

2. Scope

To benefit from "sursis" the offender must fulfil four conditions:

(a) He must not be liable to a penalty exceeding one year's imprisonment, this excluding suspension of a sentence to imprisonment with hard labour.

(b) His criminal record in the five years preceding the commission of the offence must show no sentence involving deprivation of liberty, either in Switzerland or abroad, for a deliberate crime or misdemeanour.

(c) Within the limit of his means the offender must have made good "the damage determined by the court or by agreement with the injured party".

(d) Finally when the character and antecedents of the offender are considered "sursis" must appear the most likely means of preventing the commission of further offences.

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It follows that "sursis" is very extensively used: in 1950 out of 19,453 offenders, of whom 9,369 were recidivists, 7,694 were granted the benefit of it. As has already been indicated, however, the court must act on the merits of each particular case and has three different courses at its disposal:

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The court is not, moreover, only empowered to resort to probation ("sursis" subject to supervision) at the time it pronounces sentence. It seems that since the law of 5 October 1950 it is equally possible to use this measure, in preference

to revoking a grant of "sursis", when the offender has committed some minor infringement of the condition imposed upon him for the trial period.

Unfortunately it is impossible to establish the proportion of cases in which offenders to whom "sursis" has been granted have been placed under supervision but it may be said that the practice is growing.

4. Supervision and treatment during the probation period

Placing an offender under guidance necessarily involves supervision. The Law prescribes that this is to be performed "with discretion" so as not to "prejudice" the probationer's position. Reference to the means by which supervision is carried out is made under the heading which follows.

As regards treatment, this is provided by the rules of conduct which the court imposes at the time of sentence with the object of preventing a second offence. Reference has already been made to these and examples have been cited from the law itself.

5. Personnel

The care of offenders requires of course the creation of a special organization for this purpose. This task has been entrusted by the Swiss parliament to the cantons (Penal Code, Article 379) with the reservation that the function must not be entrusted to police officers, so as not to prejudice the position of offenders. The granting of this discretion to the cantons is explained by the need to allow for local contingencies which differ widely between, for example a rural area, with a small incidence of crime, and the large urban centres of population.

Some cantons have entrusted supervision to "voluntary societies" who already occupied themselves with released offenders. Elsewhere supervision is a public service employing whole-time officers: and there are yet other arrangements (certainly not less than five) which, it may be affirmed, can all be justified by local needs.

The necessary brevity of this statement does not permit more to be said under this head: the essential point is that in every canton there are persons exercising effective supervision.

6. Organization and administration of the service

Here again no account will be given of administrative details. What is important is the method by which supervision is exercised. Some of the professional probation officers elect to be responsible for supervision themselves, having personal control of a case. Elsewhere their task is to find a "patron", a private person, who is willing to undertake to watch over and assist the offender. This private patron is a sort of guardian for the offender and a correspondent for the body responsible for supervision. This, as can be seen, is a question of method on which thought is divided.

What is certain is that the role of the person carrying out supervision is above all that of a "guardian angel" to the offender; it is no part of his task to give orders or to impose new or alternative requirements as to conduct. If the offender is unsatisfactory and if, in particular, he refuses to co-operate, the appropriate authority will inform the court, which then becomes responsible for taking whatever measures are fitting and especially for revoking the grant of "sursis" if there is need.

Supervision entails in particular both moral and material assistance, implying according to the circumstances of the case, the obligation to offer advice, find the probationer employment, regulate his affairs and supervise his expenditure etc. - with the object always of putting him in a position to lead an honest life. We have in fact an agency specialized in helping persons who have been at odds with the law.

Qualifications such as certificates and diplomas, or the proof of an academic training in social science, have not hitherto been required of professional probation officers (who must not be confused with the "patron" to whom reference has just been made). The probation officer's duties being of so personal a nature, human qualities undoubtedly outweigh academic learning, and those selected have generally been persons who appeared specially gifted for the work. In particular rewarding experiments have been made in the employment of women social workers for the supervision of men.

The organization of the service itself varies between cantons. In one there will be only one professional officer whose services are amply sufficient. In another there will be a number of officers working under a principal officer.

7. Evaluation of results

Have successful results been achieved under this system? It must be pointed out that for most cantons "sursis subject to supervision" was an innovation introduced by a Penal Code coming into force in 1942. Many courts were slow to become aware of it and others showed a certain scepticism towards supervision of which they formed a false conception by associating it with certain "charitable societies" which had at one time cared for released offenders. In other words during the first years of application of the Penal Code this special measure was infrequently used. As has been said it is more frequently used today: unfortunately no statistics of results have been compiled.

It should be added that the cantons also possibly did not appreciate the need for a re-organization of the services responsible for supervision. Some have been more far sighted (Geneva and Berne) and it is in the cantons where supervision is efficiently organized, that it is most often used by the courts, often with successful results.

A somewhat frequent failing must however be pointed out: those responsible for supervision are often not advised that it is operative, in a case of "sursis" subject to supervision, until some time after the judgment is given and this inevitably has deleterious results.

8. Remarks

Experience has been too short to enable a final opinion to be expressed. De lege ferenda it is thought that "sursis" subject to supervision should be established as a measure sui generis distinct from the simple form of "sursis" which public opinion is prone to regard as a "let-off" and the gravity of which is similarly not always apparent to the offender. What is more the introduction of a separate measure of "supervised freedom" or "probation" would encourage courts to a more rational use of it.

It may also be added that the system of supervision, the broad outlines of which have just been stated, is open also to prisoners granted a conditional release; with the difference that it is no longer the court but the administration which performs the functions pertaining to the judicial authority in the case of "sursis".

B. Probation of juveniles

Although the present Seminar is only considering probation of adults it may be pointed out that the provisions we have just described are applied - and even more extensively - to juveniles (cf., in particular, Article 96 of the Penal Code on conditional suspension of the execution of punishment). Reference may also be made to another form of probation which may be described by borrowing the words of the law (Article 97) on the suspended sentence.

"When it is not possible to judge with certainty whether the adolescent is a moral delinquent or perverted, or in danger of being so, or if he is in need of special treatment, the appropriate authority may suspend its decision as to the penalty or other measure. The adolescent will be placed under supervision. A trial period not exceeding three years will be imposed.

"If the adolescent does not successfully undergo the period of trial, the authority will sentence him to detention or impose a fine or take one of the other measures provided in respect of adolescents.

"If he undergoes the period of trial successfully the authority will order the erasure of the entry in the criminal record."

UNITED KINGDOM*

I. Legal provision and scope of application

1. The statutory basis of the probation system in England and Wales, and in Scotland, respectively, is contained in the Criminal Justice Act, 1948, which came into operation on 1 August 1949, and the Criminal Justice (Scotland) Act, 1949, which came into operation on 12 June 1950. These statutes replaced previous enactments dating from 1907. Provisions similar to those of the Act of 1948 were enacted for Northern Ireland in the Probation (Northern Ireland) Act, 1950. The term "probation" means the method of treatment applied to an offender who, instead of being sentenced, is the subject of a conditional court order (known as a "probation order") requiring him to be under the supervision of a probation officer.

2. A court may make a probation order in respect of an offender (whether or not a first offender) of any age and of either sex where, having regard to the circumstances, including the nature of the offence and the character of the offender, the court considers it expedient to do so instead of sentencing him. (The only offences for which probation may not be used are those for which the sentence is fixed by law; that is, offences punishable by death, for practical purposes, murder or treason.) In all cases in England and Wales, and in the higher courts in Scotland, the order is made after conviction, but the probationer is absolved from most of the usual legal consequences of conviction unless he is sentenced subsequently for the offence for which he was placed on probation. In summary cases in Scotland the probation order is made without a conviction being recorded. (The term "conviction" is not used in relation to persons under the age of seventeen; in their cases the term used is "finding of guilt".)

3. The court must explain to the offender the effect of the probation order and its requirements; in England and Wales if he has reached the age of fourteen, and in Scotland in all cases, the order cannot be made unless he expresses his willingness to comply with all its requirements.

II. Court function (the probation order, its requirements and enforcement)

4. The court's first function is to establish whether the person charged is guilty of the offence; its next and separate function is to decide on the method of treatment, and the offender's suitability for probation is considered as part of this process.

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* Prepared by the Home Office and the Scottish Home Department.

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5. Boys and girls under the age of seventeen are normally dealt with in a juvenile court, and, except in trivial cases, the court must be provided, either by the local authority or by a probation officer, with reports about their home surroundings, school record, health and character. An adult court can, at its discretion, call for a report from a probation officer to assist it in determining the most suitable method of dealing with any defendant. Police reports are also available, and medical reports can be obtained where necessary. A court may remand an offender on bail or in custody while enquiries are made; where a remand is not practicable and the court so wishes, the probation officer collects as much information as possible before the trial takes place. None of these reports is presented to the court until guilt has been established; a copy of a probation officer's report to the court (other than a juvenile court) must be given to the offender or his legal representative.

6. A probation order requires the probationer to be under the supervision of a probation officer for the period of the order, being not less than one year and not more than three years. The court usually inserts one or more additional requirements of a general nature designed to help the probationer; in particular, it is usual to require him to receive visits from the probation officer at home and to call at the probation office as the officer may direct. Requirements directed to the particular circumstances of the case can also be inserted: for example, that the probationer should reside in a place named by the court or receive treatment for his mental condition.

7. Residence requirements. A probation order may require a probationer to live in a specified place, for example, with relatives or in lodgings, or, if training is required, in a hostel or home. A probationer may not be required to live in a hostel or home for more than twelve months, and, if the requirement is for more than six months, the supervising court must, at the end of six months, consider in the light of the probation officer's report whether the residence requirement should be cancelled or its length reduced. The cost of the probationer's maintenance while living away from home in pursuance of a requirement in an order can be met in approved cases, in whole or in part, from probation funds. There are thirty-two hostels and twelve homes in England and Wales which have been approved by the Home Secretary for probationers between the ages of fifteen and twenty-one on admission. They are managed by voluntary bodies in accordance with rules made by the Home Secretary and are maintained mainly from public funds. Fifteen hostels and homes in Scotland are similarly approved and regulated by the Secretary of State for Scotland. Probationers go out to work daily from the hostels and contribute from their wages towards the cost of their maintenance; the homes provide full-time training on the premises.

8. Treatment for mental condition. Where the court is satisfied on medical evidence that an offender who is not certifiable as insane or mentally deficient requires treatment for his mental condition, the probation order can require the probationer to accept such treatment as either a resident or a non-resident patient for not more than twelve months.

9. Payment of sums by way of damages for injury or compensation for loss may not be made a requirement of a probation order, but in England and Wales the court can make a separate order for this purpose.

10. In England and Wales, supervision is exercised by an officer assigned to the petty sessional division (see paragraph 22 below) named in the order, generally that in which the probationer is residing for the time being: the court for that division is the supervising court. A woman or girl must be supervised by a woman officer. In Scotland, a probationer is supervised by a probation officer named in the order who is selected from the officers for the probation area in which the offender resides or is to reside.

11. Amendment and discharge of the order. The supervising court can amend the requirements of a probation order on the application of the probation officer or the probationer, but, in England and Wales, if the probationer has reached the age of fourteen, and in all cases in Scotland, the period of the order cannot be extended or any new requirement inserted unless he consents. The court which made the order may discharge it on the application of the probation officer or the probationer.

12. Enforcement of the order. A probationer who fails to comply with the terms of the order may be brought before a court and either fined not more than £10 (or, if between the ages of twelve and twenty-one years, required in England and Wales to attend at an attendance centre if one is available) the probation order continuing in force, or dealt with for the offence for which he was placed on probation as though he had just been found guilty of it, in which case the order is terminated. A probationer who commits a further offence during the currency of the order may also be brought before the court and dealt with for the original offence.

III. Probation supervision and treatment

13. It falls to the probation officer, in the words first used in the Probation of Offenders Act, 1907, to "advise, assist and befriend" the probationer. The officer's case-work must be suited to the needs of the individual; initially, he may be concerned with the probationer's immediate material needs such as finding employment or somewhere to live, but, even while he attends to these needs, the officer will consider for what reasons and in what ways the probationer is out of adjustment to the normal demands of society. He will come to understand some, if not all, of the causes, and will be in a position to try to eradicate or modify them or, if they are not susceptible to change, to help the probationer to adjust himself to them.

14. The probation officer meets the probationer at his home, at the probation office or if need be elsewhere, and especially during the early part of the probation period meetings are frequent. He keeps a case record of relevant information about the probationer, his contact with him, any change of circumstances or attitude, and a periodical assessment of progress. He is

helped in planning his case-work supervision by discussion with his senior or principal probation officer and by a case committee (see paragraph 24 below).

15. When a probationer is undergoing residential treatment for his mental condition, responsibility rests with the medical authorities; the probation officer's task under their guidance is to keep in friendly touch with the probationer, and to do such liaison work as may be required between the doctor and the court. When the residential treatment is completed the probation officer resumes responsibility for supervision.

16. The probation officer can apply to the court at any time for amendment or discharge of the order; this enables it to be kept up to date by removing a requirement which has ceased to be useful or by adding a new one, or, if a longer period of supervision is required, the order may be extended up to a maximum period of three years. Where there is substantial failure on the part of the probationer to carry out his undertakings, the probation officer will bring him back before the court (see paragraph 12 above).

IV. Probation personnel

17. Every probation committee is required to appoint a sufficient number of probation officers and, in England and Wales, to make at least one man and one woman officer available at each court, including any superior court in its area. There are in England and Wales some 1,100 whole-time and 100 part-time officers, about one-third of whom are women. In Scotland, there are 91 whole-time and 37 part-time salaried probation officers, about one-fourth of whom are women.

18. New entrants to the probation service must have reached the age of twenty-three but, normally, not the age of forty.

19. The conditions of employment of probation officers, including salaries, are prescribed by rules made by the Home Secretary and Secretary of State for Scotland respectively. The Home Secretary is advised on these matters by a committee on which are representatives of justices, local authorities and the Home Office on the employers' side, and of the National Association of Probation Officers on the employees' side. The Secretary of State for Scotland is advised by a special committee of the National Joint Industrial Council for Local Authority Services on which the Scottish Home Department and the probation officers are represented.

20. In England and Wales, the Probation Advisory and Training Board (see paragraph 27 below) selects men and women for training as probation officers and plans their training; this training scheme is now the normal method of entry into the service. About seventy students complete their training each year. Applicants from the age of twenty-one upwards are considered for training which is arranged to suit the needs of individual students. Applicants under the age of thirty years usually begin their training with a two-year social science course at a university (unless they have already completed such a course) and then have about six months specialized training in probation work. Applicants

over the age of thirty years without university qualifications but with good experience of social work usually receive only specialized training of about twelve months. The specialized training consists of practical work in the field under experienced probation officers and other social workers, and a theoretical course on the law relevant to their work, criminology, social administration, psychology with special reference to delinquency, and case-work. Training is provided free of charge to the students and they also receive payment to enable them to maintain themselves during training. Refresher courses and courses on special subjects are provided for serving officers.

21. In Scotland, the Scottish Central Probation Council maintains a central register of persons considered suitable for appointment and arrangements are made for theoretical and practical training during the first twelve months of an officer's service.

V. Organization and administration

22. For the purposes of the administration of justice, there are in England and Wales 1,020 petty sessional divisions each having its own magistrates' court. The Home Secretary has power to combine two or more divisions to form a probation area, and he has exercised this power widely to form sixty-nine combined areas, most of them consisting of a county. Fifty-three single divisions remain uncombined, most of them large urban centres. In Scotland, there are twenty-one probation areas, each consisting of one or more counties or large burghs.

23. Each probation area has a probation committee, composed in England and Wales of justices, and in Scotland of representatives of the principal local authorities in the area together with representatives of the courts. The probation committee is responsible for the organization of the service within its area; it appoints probation officers, pays their salaries and expenses, provides office accommodation and clerical assistance, and generally controls all administrative matters in regard to probation. In the Metropolitan Magistrates' Courts Area of London (which comprises a population of over three million) the Home Secretary has the functions exercised by a probation committee elsewhere.

24. For each petty sessional division in England and Wales, whether or not it is part of a combined area, there is a case committee of local justices. In Scotland, the probation committee may appoint one or more case committees. These committees exercise general supervision over the work and records of the probation officers and consider with them the progress of persons under supervision.

25. Principle probation officers are employed in forty of the larger probation areas in England and Wales and in seven areas in Scotland; in these areas there are substantial staffs to be supervised and a considerable amount of organizing work to be done. In some smaller probation areas, and at some centres in combined areas, senior probation officers undertake the supervisory duties.

26. The expenditure of probation committees is controlled by the probation rules and is met by local authorities who receive from the Exchequer, grants amounting to one-half of this expenditure.

27. The Home Secretary in England and Wales, and the Secretary of State in Scotland, are the central authorities for the administration of law relating to the probation system. Each Secretary of State makes statutory rules regulating the constitution, duties and expenditure of probation committees and prescribes the duties and conditions of service of probation officers. Probation inspectors of the Home Office and the Scottish Home Department respectively visit probation officers and help them with advice and instructive criticism as may be necessary, and review the efficiency of the local service. In England and Wales, the Probation Advisory and Training Board is appointed by the Home Secretary to advise him on questions relating to the administration of the probation system and the work of probation officers, and on the training of applicants for appointment as probation officers, and of persons serving as probation officers. The Board is composed of justices, clerks to courts, probation officers and other persons with special experience of social work, and officers of the Home Office. The Secretary of State for Scotland is advised on any matter relating to the probation system by the Scottish Central Probation Council.

VI. Assessment of results

28. More than forty years' experience has shown that many persons of all ages who are found guilty of offences, even of a serious character, can be dealt with successfully by probation. The extent to which the probation method of treatment is used by the courts is shown by these figures:

(a) England and Wales

Persons placed on probation in the year 1951 for indictable offences (that is, broadly speaking, the more serious offences)

	Courts of Summary Jurisdiction				Higher Courts		Total	
	Persons aged 17 and over		Persons under the age of 17					
	Male	Female	Male	Female	Male	Female	Male	Female
Number of offenders dealt with for indictable offences	53,964	11,197	43,163	3,630	19,439	943	116,566	15,770
Number of these persons placed on probation	4,819	2,670	17,650	1,844	3,185	276	25,654	4,790
Percentage placed on probation	8.9	23.8	40.9	50.8	16.4	29.3	22.0	30.4

(b) Scotland

Persons placed on probation for crimes in the year 1951

	Courts of Summary Jurisdiction				Higher Courts		Total	
	17 +		Under 17					
	Male	Female	Male	Female	Male	Female	Male	Female
Number of offenders dealt with	10,384	1,661	9,645	726	1,348	72	21,377	2,459
Number placed on probation	350	102	2,670	284	56	7	3,076	393
Percentage placed on probation	3.4	6.1	27.7	39.1	4.2	9.7	14.3	16.0

29. At the end of 1951 there were 45,725 probation orders in force in England and Wales, and 4,726 in Scotland. Of these probationers, 83 per cent in England and Wales and 87.9 per cent in Scotland were males, and 17 per cent in England and Wales and 12.1 per cent in Scotland females. The following table shows their age groups at the time the orders were made:

Age group when order was made	Males				Females			
	Number of Orders		Percentage		Number of Orders		Percentage	
	England & Wales	Scot-land	England & Wales	Scot-land	England & Wales	Scot-land	England & Wales	Scot-land
Under 14	14,629	1,845	38.4	44.4	1,364	168	18.0	29.4
14 and under 17	10,199	1,474	26.8	35.5	1,272	185	16.7	32.4
17 and under 21	5,315	589	13.9	14.2	1,517	134	20.0	23.5
21 and over	7,987	247	20.9	5.9	3,442	84	45.3	14.7
Totals	38,130	4,155	100	100	7,595	571	100	100

30. Of the 29,500 probationers in England and Wales and the 3,231 probationers in Scotland whose orders terminated during 1951, 78 per cent in England and Wales and 85.7 per cent in Scotland of the males, and 85 per cent in England and Wales and 87.5 per cent in Scotland of the females, completed on probation the full period of the order or had it terminated earlier by the court because of good progress. The remainder (6,300 in England and Wales and 454 in Scotland) did not complete the period of supervision: most of them were again brought before the court and, as a result, 3,300 males in England and Wales and 326 males in Scotland, and 350 females in England and Wales and 33 females in Scotland, were sent to approved schools, Borstal institutions or prison (representing 13 per cent and 7 per cent respectively in England and Wales, and 11.4 per cent and 8.8 per cent respectively in Scotland of the males and females whose orders terminated during 1951).

YUGOSLAVIA

I. The conditional sentence - The new Yugoslav Penal Code came into force on 1 July 1951. It does not provide for the system of probation as it exists in English law with its most characteristic features: the suspension of the imposition of punishment and placing the offender under supervision.

The Yugoslav Penal Code does, however, provide for the conditional sentence. The relevant provisions read, as follows:

Article 48

Imposition of conditional sentence

(1) When a person is sentenced to detention for a period up to two years or is fined, the court may suspend the execution of the pronounced sentence on the condition that the convicted person does not intentionally commit another equally grave or graver criminal offence within a determined period of time, which may be not less than one year and not more than five years.

(2) The execution of the sentence may also be suspended on condition that the compensation for damages fixed in the judgment is paid by the convicted person within a determined period of time, which may not exceed one year.

(3) The court shall suspend conditionally the execution of the imposed sentence if it establishes that, in view of the circumstances under which the offence was committed and the behaviour of the offender after the offence, and having regard to his former record, it may be reasonably expected that the offender will not in the future commit criminal offences even without the execution of the sentence, and that in such a case the purpose of punishment is attained by mere pronouncement of the sentence.

(4) A conditional sentence may not be awarded to a person who during the preceding five years has been sentenced to imprisonment or to unconditional detention for a period of more than one year.

(5) The court's judgment may state that the punishment of temporary prohibition to exercise a specified profession shall be executed regardless of the fact that execution of the principal penalty is suspended.

Article 49

Revocation of conditional sentence

(1) The court shall revoke a conditional sentence if, during the period of suspension determined by the judgment, the convicted person intentionally commits another equally grave or graver criminal offence, or if, after pronouncement of the conditional sentence, he is convicted of a criminal offence committed before such pronouncement and the court finds that there would have been no ground for the conditional sentence had the previous criminal offence been known.

(2) When a conditional sentence is revoked the court shall impose a single penalty for all criminal offences in accordance with article 46 of this Code considering the penalty for the previous offence as already fixed.

(3) The conditional sentence may be revoked if, during the year following the expiration of the period for which execution of the sentence was suspended, the person is convicted of another equally grave or graver offence committed during the period of the conditional sentence.

(4) If the execution of the sentence has been suspended for compensation for damages, the court shall revoke the conditional sentence if the convicted person does not compensate for the damages within the period fixed, but it may also fix a new period for compensation for damages or rescind that condition if it establishes that the convicted person is not in a position to compensate for the damage.

Article 50

Effect of unrevoked conditional sentence

If a conditional sentence is not revoked, the person conditionally sentenced shall not be considered convicted of the offence in regard to which the conditional sentence was incurred.

It is noteworthy that the new Yugoslav Penal Code provides for wider possibilities of applying the conditional sentence than was the case in the former Yugoslav Penal Code of 1929. Under the latter the conditional sentence could be applied only in case of a judgment ordering imprisonment for a period of not more than one year. The new Penal Code extends this limit to two years.

II. Historical background - The conditional sentence was introduced into Yugoslav law by the Penal Code of 1929. The system previously existed only in the province of Croatia where it was introduced by an autonomous and special law in 1916. The law was based on the Continental Franco-Belgian system, but, by its provision that a conditional sentence could be passed also in case of a fine, the Croatian law went farther than many similar laws applicable in other European countries at that time. But, in its application to sentences of imprisonment,

the Croatian law imposed a rather narrow limit permitting the application of a conditional sentence only in cases of sentences of less than three months imprisonment.

It might be interesting to note that the idea of the conditional sentence was already known in the law of the Yugoslav peoples several centuries ago. The following examples are quoted from fifteenth century records discovered in the old archives of the City of Zagreb.

(1) By a judgment of 27 August 1451, a Zagreb citizen, named Toma Ceden, was sentenced to a fine of 10 marks, and in case of nonpayment, to the loss of his hand, for having struck the city magistrate Nikola on his face with an axe and for having plucked at his beard. But, upon entreaties by honest people, both spiritual and temporal and particularly upon the request of the injured magistrate himself, the delinquent was pardoned on the condition that he refrained for ever from committing such or similar acts. Should he not keep the condition, he would answer for both offences

(2) By a judgment of 13 August 1456, a Djuro, son of Antun of Bacani, was found guilty of having stolen various things at the yearly fair of St. Stjepan for which thefts he should have been hanged. Upon the entreaties of honest people the court pardoned him provided that he repented for the thefts and never again committed similar acts; otherwise he would be punished for this and future offences without any mercy.

(3) A judgment of 1 December 1461 reads: "For having blasphemed the Holy Name of God and of the Holy Virgin, Djuro Brudic is sentenced to be flogged naked in front of the parish church of St. Marcus and of many people. After he is whipped, his tongue should be taken out and pierced through and thereafter he should be removed on the cart used for the transport of delinquents to the gallows, and be banished. He should forfeit his property to the benefit of the City." By a new sentence of 16 January 1462 and upon entreaties of priests and other honest men, Djuro Brudic was, however, pardoned on the condition that he did not carry arms while in the city, that he did not enter inns or participate in any games, and that he did not insult or threaten anybody; otherwise the punishment would be applied without mercy.

III. Some statistical data - In view of the fact that the new Penal Code has been applied in Yugoslavia only for a relatively short period, there are no complete statistical data on the application of the conditional sentence in practice.

According to incomplete information the conditional sentence has been applied in approximately 26 per cent of sentences. It is applied most frequently in cases of sentences for light bodily injuries (about 50 per cent), and in cases of insult and defamation (about 45 per cent); it is applied less frequently in cases of theft, (about 20 per cent).

IV. The system of conditional release - Among other systems which may be included within the denomination of "related measures", the system of conditional release may be mentioned. The relevant legal provision reads as follows:

Article 56

Conditional release

(1) A person sentenced to imprisonment or detention may be conditionally released after serving half of his sentence if he proves by his work and behaviour that he has improved himself so much that he may be expected not to commit further criminal offences.

(2) If a convicted person particularly distinguishes himself by his work and behaviour in the course of the execution of his sentence, he may be conditionally released even before serving half of his sentence of imprisonment or detention.

(3) A person sentenced to imprisonment for life may be conditionally released after serving fifteen years of his sentence if he fulfills the conditions set forth in paragraph 1 of this article.

(4) Conditional release shall have effect until the expiration of the period of the sentence pronounced; where a sentence of death is commuted to a sentence of imprisonment for life the period of conditional release is ten years.

Article 57

Revocation of conditional release

(1) Conditional release shall be revoked, if during the period involved, a person conditionally released commits another criminal offence, the significance and gravity of which show that the reasons for conditional release no longer exist.

(2) In case of revocation the period of time that has elapsed since conditional release shall not be deemed to constitute time served.

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National Association of Mental Health

National Association of Probation Officers

Principal Probation Officers' Conference (England and Wales)

Probation Advisory and Training Board

Scottish Central Probation Council

APPENDIX: GLOSSARY OF ENGLISH LEGAL TERMS

Absolute discharge	Release of an offender, after a finding of guilt, without condition.
Adjournment	Postponement of a court hearing.
Approved schools	Residential schools approved by the Home Secretary for training boys or girls, under the age of seventeen on admission, who have been sent there by a court.
Bail, release on	The temporary release from custody of an accused person, on security being given by him, or by another person on his behalf, for his appearance at court when required.
Binding-over	Requiring a person to enter into an undertaking (not on conviction) to be of good behaviour and/or to keep the peace. Also used before the Criminal Justice Act, 1948, as the equivalent of conditional discharge.
Borstal institutions	Institutions provided by the Prison Commissioners for training young offenders sentenced to Borstal training by a court of Assize or Quarter Sessions who have reached the age of sixteen but not the age of twenty-one on conviction.
Clerk of Assize) Clerk of the Peace) Clerk to the Justices)	A professional non-judicial court officer appointed to an Assize Court, a Court of Quarter Sessions or a Magistrates' court respectively. The clerk to the justices advises the lay magistrates (otherwise known as justices) on matters of procedure and law.
Commit	Hand over a person by a judicial order to the care of another person, to another court or to an institution.
Conditional discharge	Discharge of an offender, after a finding of guilt, on condition that he commit no further offence for a specified period not exceeding twelve months.

Conviction

A finding by a court that a person is guilty of a criminal offence. In juvenile courts (dealing with persons under the age of seventeen) the expression "finding of guilt" is used instead of "conviction". Conviction is distinguished from sentence.

Courts

Three types of courts have jurisdiction to deal with criminal offences as courts of first instance:

(1) Magistrates' courts (known also as petty sessional courts or courts of summary jurisdiction) dispose of about 90 per cent of all criminal offences; they have power to impose sentences of imprisonment normally up to a maximum of six months. The court consists of two or more lay justices who are unpaid, except in London and in some other large towns where paid Stipendiary Magistrates (in London called Metropolitan Magistrates), who are lawyers, sit alone. There is a right of appeal on questions of fact to Quarter Sessions, and on points of Law to the High Court.

Juvenile courts are specially constituted Magistrates' courts; they deal with all offences, except homicide committed by persons who have reached the age of eight but not the age of seventeen. The court consists of either two or three justices from a juvenile court panel formed of justices selected for their suitability to deal with juveniles.

(2) Quarter Sessions or (3) Assizes. Persons whose cases are not disposed of by Magistrates' courts are tried either by Assizes or by Quarter Sessions (except that certain of the gravest offences, such as murder, manslaughter, robbery with violence, forgery and blackmail, can be dealt with only by Assizes).

Quarter Sessions consists in countries of lay justices, usually presided over by a legally qualified chairman and in boroughs of a Recorder, who is a lawyer and sits alone.

Assize courts include the Central Criminal Court in London (known as the Old Bailey). The Judge is a judge of the High Court and sits alone.

Cases at Assizes and Quarter Sessions are heard before a jury. Appeals from both types of court are heard by the Court of Criminal Appeal.

Before a case is tried by a Court of Assize or Quarter Sessions there is a preliminary examination by a Magistrates' court, which, if it establishes that there is a case for trial, commits for trial (either on bail or in custody).

Discharge (of a probation order) — Termination of the order by the court before the end of the period specified in the order.

Dismiss — Release of the accused when the charge has not been proved.

Foster home — A private household where a juvenile is boarded out away from his parents.

Indictable
Non-indictable — Indictable offences are triable by a court with a jury, namely Assizes or Quarter Sessions although many of the less serious ones are dealt with by a Magistrates' court with the consent of the prosecution and the accused person. Non-indictable (otherwise known as summary) offences are minor offences dealt with by Magistrates' courts, but, if the Magistrates' court can impose for the offence a sentence of more than three months' imprisonment, the accused can elect to be tried by a Court of Assize or Quarter Sessions.

Jury — In criminal proceedings a jury consists of twelve persons empanelled for the purpose and unpaid, whose duty is to decide issues of fact. Questions of law are for the Judge at Assizes, and for the Chairman or Recorder at Quarter Sessions.

Justice of the Peace) Magistrate)	A person appointed to administer justic[illegible] ithin a certain district. Apart from the metropolitan and provincial stipendiary magistrates, they are unpaid and legal qualifications are not required.
Mental deficiency	A condition (defined by statute) of arrested or incomplete development of mind.
Petty sessional division	For purposes of the administration of justice by magistrates in England and Wales there are 1,020 divisions, each with its own Magistrates' court.
Remand	Commit an accused person to custody or release him on bail.
Remand homes	Institutions where juveniles (under the age of seventeen) are kept in custody awaiting or during the adjournment of court proceedings, or awaiting entry to an approved school or for punitive detention up to one month.
Requirement as to residence	Requirement imposed by a probation order specifying where the probationer is to reside for a stated period; in the case of a hostel or home the period must not exceed twelve months.
Sentence	The final order of the court determining the punishment that a convicted person is to undergo (often used of the punishment itself).
Summons	An order made by a magistrate requiring a person to appear before a court.
Warrant	An order issued by a magistrate to the police, to arrest a person and bring him before a court.

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